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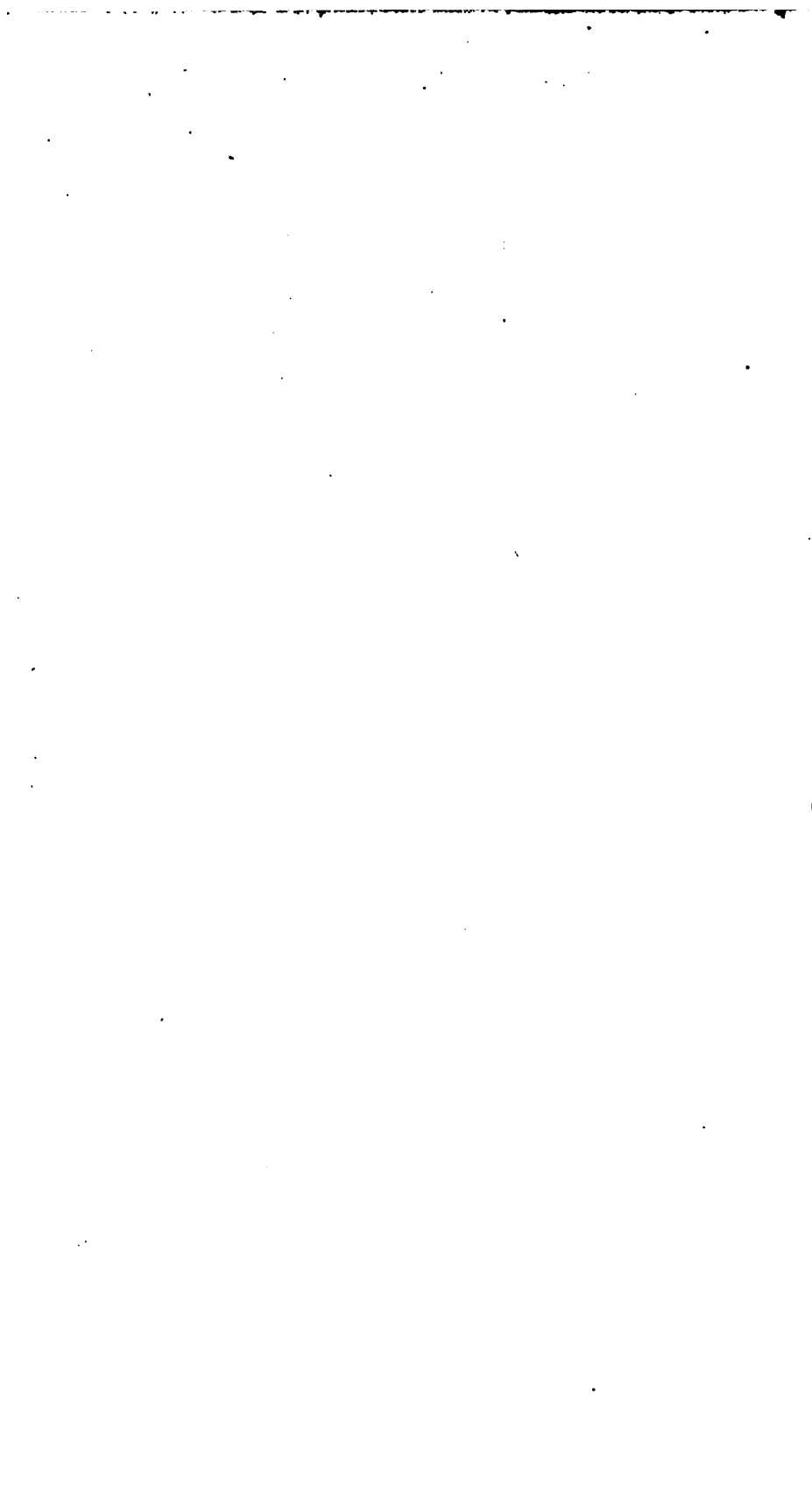
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To the Hon Charles A. Dana  
with the compliments  
of the Author  
Boston March 2. 1891









**A TREATISE**

**ON THE**

**LAW OF CITIZENSHIP**

**IN THE**

**UNITED STATES**

---

**TREATED HISTORICALLY**

**BY**

**PRENTISS WEBSTER**

**OF THE BOSTON BAR**

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**ALBANY, N. Y.**  
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TO THE

**Honorable Benjamin Franklin Butler,**

OF MASSACHUSETTS,

WHO, IN SEPTEMBER, 1890, COMPLETED ONE-HALF A CENTURY OF ACTIVE  
PRACTICE OF THE LAW IN THE COURTS OF MANY STATES, AND IN  
THE FEDERAL COURTS OF THE UNITED STATES, THESE  
PAGES ARE RESPECTFULLY INSCRIBED BY THE

**AUTHOR.**



## PREFACE.

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“The distinction between citizens proper, that is, the constituent members of the political sovereignty, and subjects of that sovereignty who are not, therefore, citizens is recognized in the best authorities of the public law.” This distinction is true. The further question of who are and who are not citizens has its difficulties. Accept the definition of citizenship to be the enjoyment of equal rights and privileges at home, and equal protection abroad, and consider the question from this standpoint, from which alone it should be treated, for we have no law in the United States which divides our citizens into classes or makes any difference whatever between them. We then discover the importance that the equal rights of citizens when at home should maintain when abroad, because questions as to citizenship are determined by municipal law in subordination to the law of nations. Therefore, the value of citizenship should not be underestimated.

Every individual should have some central point from which he emanates and to which he returns, where he is clothed with citizenship and the consequent enjoyment of all rights and privileges which citizenship confers.

The modern ways of communication from one country to another, the necessity of temporary and permanent sojourn by foreigners in this country, and by American citizens in foreign countries growing out of trade and commercial relations, require that a citizen of the United States should understand his exact relation to this government, and his relations to foreign governments; and to reach this understanding, the question of citizenship should be discussed with the light of the existing practice, not solely from the standpoint of the municipal statutes of this



country, but more especially from the standpoint of the practice of the international common law to which our own practice has materially contributed.

In the early days of our republic the principle was laid down to welcome all who seek homes in this country, and to deny it to none. The right of emigration and consequent expatriation by means of naturalization was recognized. Aliens born have ever found homes in our republic; generations have succeeded them and engaged in the development, assisted in the progress, identified themselves with our institutions, and shared in the pride of our greatness.

In the days of the Roman republic it was the proud honor of a Roman citizen to state at home and abroad *civis Romanus sum*; so it should be in this country for an American to maintain, "I am an American citizen."

Therefore, the elements which enter into the inquiry should be considered.

The first inquiry should be the means by which citizenship is acquired; whether by descent or naturalization; in either one of these two ways citizenship is generally conferred except in cases of adoption by marriage.

Municipal rules have value within the territory of their jurisdiction, but have no extra-territorial effect.

To illustrate: In our country there may be a municipal rule, that the children of subjects of that country and the children of aliens born within the territory of that country are by virtue of birth within the territory subjects of that country. The same rule may prevail in a neighboring country. Again, in both these countries there may be municipal rules by which the children of subjects of the respective countries born abroad follow the citizenship of the parents. It is evident that a conflict as to citizenship cannot be avoided in these cases.

For example: Assume England and the United States to have the same rules. A child of a citizen of the United States born in England is an English subject, and the statute of the United States asserts that the children of Americans born abroad are Americans. Yet these rules have governed until quite a recent date in both countries. For example: in 1858 the Earl of

Malmesbury expressed the following opinion in Walewaski's case: "If Walewaski had been born in France, of English parents, and had voluntarily returned to France, he would have been a British subject in England, but he would not have been entitled to British privileges or protection in France as against the country of his actual birth or domicile."

These rules are the outgrowth of municipal statutes, and, as such, involve the question of citizenship, in continuous conflict.

This should be avoided, and the practice of modern days will show the impracticability of the theory of the derivation of citizenship from birth on this or that inanimate piece of ground, whether in the country of one's parents or on foreign soil. Such a theory had its origin in the feudal law, on which the principles of this country were not grounded, and, while it may be argued that it finds place in the English common law, it must not be forgotten that "our ancestors brought with them, and claimed as their birthright its general principles, and adopted that portion of it only which was applicable to their situation."

The conclusion reached in the following discourse will be that citizenship is conferred by descent.

The other means of acquisition of citizenship is by naturalization. Under our practice no rule governs by which an inquiry is possible into the relations of the applicant to his country of origin. It cannot be doubted on the authorities: first, that every subject has obligations to perform to his country; and second, that the obligations should be such that they can be legally discharged. This done and the departure of the citizen from his country of origin to seek a new home elsewhere should be permitted.

Great Britain, since 1870, has recognized the right of free expatriation by her subjects. France gives to her citizens the authorization to be naturalized abroad.

Germany countenances the right of departure when in good faith to found homes in foreign lands after the fulfillment of existing obligations.

The other countries of Europe do not dispute the legal right of their subjects to become naturalized citizens abroad when done

lawfully with a due observance of the qualifications which they have enacted to govern in such cases, with the exception of Russia and Turkey, in which countries an immunity peculiar to those governments is enjoyed, by which the restriction on the exercise of the right is held to be a matter of imperial favor.

The South American republics recognize the right in accordance with the practice existing among civilized governments.

There is, however, involved in this principle of expatriation a very important point — that of acting in good faith. Citizenship is not, and should not be held to be, a matter of convenience, to be taken on and thrown off to meet existing emergencies; nor should it be resorted to as a supposed means by which to evade obligations under which any individual is to either his country of origin or country of adoption. The very element of departure from one country and the acquisition of citizenship in another should be governed by good faith to the respective authorities of the countries with which the individual has to do in the transfer of his allegiance.

It is difficult to find a case where good faith has governed the action of the individual, that the question of citizenship has arisen to cause the citizen inconvenience or trouble.

In the Christ Ernst case the rule is laid down to be — the natural right of every free person who owes no debt and is guilty of no crime, to leave the country of his birth in good faith, and for an honest purpose, is incontestible. It will be found in the practice that the intent is more often controlled by the acts of the citizen than by his professions or loudly expressed oral declarations, in particular with reference to the loss of citizenship acquired by naturalization upon return to the country of origin.

This has grown out of our naturalization treaties made and entered into with several European governments and South American republics in 1868 and 1870. For example: A former citizen of the United States becomes a naturalized citizen of the Republic of Ecuador; he returns to the country of his nativity; he remains two years, and, acting under the naturalization treaty, the government of the United States claims that he has renounced his citizenship in Ecuador by a continued two years' residence in his country of origin; this claim he denies, and produces evidence of his intent to remain a citizen of Ecuador.

In a similar case with Germany no provision is made for the production of evidence of his intent, and the word "may" in the treaty has, in the practice with Germany, been construed to mean "shall." Merely no right is given to defend against the claim of the government.

In a similar case with Great Britain a change depends on the citizen's own volition; if a former British subject has become a naturalized citizen of the United States, he must comply with the naturalization laws of Great Britain to divest himself of his American citizenship.

The rule laid down by Mr. Justice Marshall is clear and explicit: "If an American citizen can expatriate himself he divests himself by the very act of expatriation as well of the obligations as of the rights of a citizen. He becomes *ipso facto* an alien, and citizenship once lost cannot be recovered by residence, but he must go through the formula prescribed by law for the naturalization of an alien."

In the English practice, under the Naturalization Act of 1870, the alien who applies for English citizenship is granted a qualified certificate of naturalization, which answers well the purpose of citizenship in England when at home, but when abroad, in particular in the country of origin, does not carry with it that protection which English citizens enjoy when abroad, who are such by descent or native born, as the term is used in England. This precautionary measure is taken with a view to avoid conflict of authority as between the country of origin and the country of adoption. In cases where the alien departed from his country, leaving obligations unfulfilled, illegally or without authorization, to be naturalized abroad, or whatever the prerequisites may have been, which have not been complied with, the English qualified certificate would seem to be granted, dependent upon these conditions precedent to make the citizenship complete and insure protection from the English government. It may go so far in the practice as to be in effect, when the conditions have been avoided, entirely nugatory to a qualified naturalized alien in England when abroad, and in particular when in the country of origin.

*In re Bourgeoise*, a Frenchman came to reside in England, and

in 1871 obtained the usual qualified certificate of naturalization as a British subject, but did not obtain from the French government the necessary authority to become a naturalized citizen abroad. In 1880, he married an English subject and returned to France to reside and died there. *Held*, that at the time of his death he was a French citizen.

Such a relation to a government must be very unsatisfactory in form and in fact. Regardless of the question of good faith, and when the applicant has acted in every regard in perfect good faith, he receives his naturalization certificate with qualifications.

Citizenship qualifiedly conferred cannot have the effect of making the citizen a constituent member of the body politic, of constituting him a part of the whole, with equal rights and privileges at home and equal protection when abroad with the members of the body politic, who constitute the whole. It leads to a classification abroad at least if not at home, and is not much removed from the grant in the Middle Ages of trading certificates to aliens.

This classification does not maintain in this country nor in other European countries.

It will further be seen from the practice that the question of citizenship is often left in an unsettled condition by the authorities when brought up for consideration, when the naturalized citizen returns to the country of origin for either temporary or permanent purposes, where the residence is extended over the terminus of time of two years mentioned in the naturalization treaties. In particular is this the case with Germany, where rather than go into the *rationale* of the question a peremptory order issues to leave the country for the reason that the presence of the citizen is inimical to the interests of the country.

This act is within the scope of the regulation of internal affairs, and unless it is carried so far in its application as to place the United States on a footing different from that of comity between nations, or deny to it the rights of a favored nation at peace with Germany, remonstrance would be futile.

There is another point out of which have grown many complications, which is the expression that a citizen can be clothed with a dual nationality: that is, in one country a citizen of that

country, and when in another country a citizen of the other country. For example: when in the United States, a citizen of the United States, and when in Germany a citizen of Germany. This was held in Stenkauler's case by the authorities of the United States.

Stenkauler was born in the United States, of German parents naturalized in the United States, who returned to Germany while the son was a few years old. Under the treaty of naturalization it was held by the German government that the father by two years' continued residence in Germany had renounced his acquired citizenship in the United States, and thereby the citizenship of the son was changed, and he was held for military service. Protection from the United States was denied him, and a dual nationality alleged, to the effect that, upon return of the son to the United States, he could take on his citizenship in this country.

The modern authorities fail to sustain this proposition.

It will be seen that the subject is important, and its importance has increased of late years. Cases have been discussed at length when they have arisen, and been determined, some with more and some with lesser comment.

The purpose of the following pages is to lead up historically to the standpoint by which citizenship in its international sense should be judged. For it is quite clear, as was said, by Mr. Justice Miller, that there is a citizenship of the United States, and a citizenship of a state which are distinct from each other, and with state citizenship this work has nothing to do, only so far as it is embodied in the question of citizenship of the United States.

The writer hopes to have determined this standard, and if his labors have convinced a few of his readers, he will feel his work has not been in vain.



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## THE LAW OF CITIZENSHIP.

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### CITIZENSHIP HISTORICALLY CONSIDERED.

Rome, throughout her rise and progress, manifested her uncontrollable thirst for empire. The perseverance of her citizens amid discouraging reverses and ultimate success over her enemies, won for her the pinnacle of greatness. All nations flocked to the "Eternal City" as the center of civilization; she dictated to the then known world; she made for it the laws and extended to all the freedom of rights which had been unknown to these nations in the relations which had governed them as deriving power through an earthly prince, from Odin, or relying upon the mandates of their Druids. They had no writers to record either their origin or their principles of law; therefore, none have come to us. They were known to the Romans as barbarians; in comparison to the Romans they were considered ignorant; they lived under the guidance of their chiefs as wandering tribes, constantly at war with each other; they lived upon the milk and flesh of their cattle and seldom cultivated the ground. These people the Romans conquered, and over their territories to the banks of the Rhine and Danube, through Spain to Africa, and

across to Britannia extended the power of Rome. With them went the principles of the Pandects, a body of laws grafted on experience and well adapted to the people of that day. Famous jurists and orators expounded its principles; they became the foundation principles of the laws of the civilized world.

The earliest dissertations on the question of citizenship are found among the writings of the Romans.

By them from time to time the rights of citizens of Rome have been discussed. Not alone the rights as members of the body politic, but also the rights of aliens to become members of the body politic, and the rights of members of the body politic to dissolve membership and depart to become members of another body politic.

The relation of members to the Roman body politic was based on the principle of *jus naturale*, of which the definition as laid down by Gajus, was: *jus naturale est quod natura omnia animalia docuit*. Within this definition was comprised man in his natural state; it was by man that the body politic was organized, and in entering the organization with his fellow men, man followed the exercise of his natural rights, and became an ingredient of the society of which he, with others, became members.

The organization formed or the state created as of man and by man, man was not so incorporated into the body politic that he could not depart; such a restriction was not placed by him on his nature, that he must forever remain a member of the society of which he became a member.

Typhonius wrote, "It is free to every man to choose the state of which he will be a member."

Although in the early days of Rome, they alone could call themselves Roman citizens who were free born and born in Rome, yet very soon thereafter foreigners were admitted to citizenship by authority of the legislative body.

Later, as Rome advanced in her conquest of the neighboring states, to these states the legislative authorities conferred charters by which the citizens of such states were admitted to Roman citizenship and their former citizenship was abolished.

In Rome the inhabitants were either free, peregrines or slaves; they were either citizens or they were not citizens; the slaves were in the power of the citizens, and these citizens had the right to make free or emancipate their slaves, and such as they emancipated became freedmen, but by the act of emancipation in itself, citizenship was not acquired. It was the being born of freedmen which conferred the citizenship after the act of emancipation was extended. Notwithstanding this rule, the legislative authorities could confer citizenship on such slaves as were emancipated by Roman citizens.

There were many inhabitants of Rome who were not citizens. They were known as peregrini, and enjoyed the privileges of Roman citizens with the exception of the suffragium, or right of suffrage. This right was conferred on such peregrini as chose to become citizens by act of the legislature.

Cicero lays down the rule, "that every man ought to be able to retain or renounce his rights of member-

ship of a society," and further adds, "that this is the firmest foundation of liberty."

Under this the Romans received all who came and forced none to remain with them.

#### EFFECT OF THE INVASION OF THE BARBARIANS ON ROME

After the downfall of Rome and its consequent loss of power, the principles of *jus naturale* as had been known throughout the empire, gave way to the principles of feudalism as introduced by the invaders.

They brought with them their own principles of government and disavowed the principles of the inhabitants of the countries which they conquered. The conquest was complete and extended to all portions of the empire. Not alone the conquerors, but also the conquered sought stability of government for the enjoyment of life, happiness and prosperity.

The conquerors came as wandering tribes, governed by a leader to whom all followers owed homage and fealty, and settled with, and in, the homes of a people whom they had reduced to subjection. The same fealty and homage was demanded of the subjected Romans as was demanded of the followers of the invading princes.

#### EFFECT OF THE INVASION OF THE BARBARIANS ON OTHER PORTIONS OF EUROPE.

Wheresoever the wandering tribes from the north of Europe established themselves, by conquest or otherwise, they took with them imitatively the same relation of subject to prince. Whether it was to the south, southwest or to the west that they wandered, the same principles and relations were enforced.

## GOVERNMENTS ESTABLISHED.

The invaders having conquered both the people and their lands, organized their governments, as being in a prince who was all powerful over his subjects. The relation as between man and man and his relation to the government was forced and involuntary. The natural rights of man as being in man were disavowed.

## INTERCOURSE BETWEEN THE STATES.

As had been the custom when the empire was extant, for its citizens to trade with citizens in the other portions of the empire, so after the invasion it became equally as necessary, as between the subjects of the different new states which were founded on the ruins of the empire.

Therefore the subjects of one prince must resort to domains of neighboring princes for purposes of trade. The common law which governed was that every subject must owe allegiance to some prince, in order to insure the subject protection when abroad. The allegiance was held to be indissoluble and could not be thrown off at the will of the subject. Yet the protection was not at all times extended by a prince to his subjects when abroad. It became very much a question of greater strength in one than in another; so much so that only the stronger prince could extend protection to his subjects when within the domain of a neighboring prince. With the growth of time, the necessities of trade enforced temporary and permanent sojourns by the subjects of one prince in the country of another prince. This led to a recognition of the right of subjects to depart from the territory of their prince.



This came from force of circumstances growing out of the inability of weaker princes to protect their subjects as against more powerful princes. It could not be done without the consent of the prince. The relation was personal and must be dissolved by permission.

#### THE ACT OF DEPARTURE OR PERMISSION.

The act of departure by which a subject threw off his allegiance to his prince and to which the prince gave his assent was ceremonious. The ceremony was different in different countries. In some countries the departure was attended with ceremonies such as implied disgrace; in others the departure was with the good wishes of the prince.

The general rule was as follows: The emigrant was accompanied by a delegate of the prince with his companions and fellow subjects to a cross road, where led a way to each of the four corners of mother earth, and there the delegate announced to the emigrant publicly, that the prince absolved him from the bond of allegiance, and gave to him his liberty, and as evidence of it, proclaimed: "*De quattuor viis ubi volueris ambulare liberam habere potestatem.*" Bluntschli *Staatsrecht*, vol. 2, p. 504. The emigrant thereupon went upon the way which he had chosen, and commenced his journey to the domain of some other prince.

In some states there were certain preliminaries with which the emigrant complied before he was taken to the cross way. After he had announced his wish to migrate, the public crier called the man and openly stated: "The man who lives here, in this village and thinks he can find occupation elsewhere better than

here, may withdraw to that better place, but first pay to our lord all damage and loss, and no one shall inquire further about him."

In other states, the act of departure was made a matter of court proceedings: the emigrant having expressed his wish to absolve himself of his allegiance to his prince, was brought into court. The court centarius struck his spear three times upon the ground and called, "Hear! hear! hear! Is there a man subject to this high court, who cannot submit to its law, then he shall first pay our prince, then the Christian church, then the common man, and let the fire in his house go out with the setting sun. The common man shall then load his goods on his wagon and bring them to the common square, where will come our gracious prince. And two of our lord's servants shall dismount and lend help to the poor man when starting on his journey by a push to the hind wheels of his wagon."

The relation of subject to prince was personal, and emigration was only possible upon permission given. This was primarily essential to the acquisition of a similar relation to a foreign prince when the emigrant settled in a foreign country.

#### DEPARTURE WITHOUT ASSENT OF THE PRINCE.

The act of departure was either with or without the intent to return. No departure was legal unless it was known to the prince. The many personal services which were owed by the subjects to their princes rendered it necessary that the presence or absence of the subject should be matters of record. For this reason, the departure of a subject without the intent to return

was attended with ceremonies, such as to impress the remaining subjects. The departure for purposes of trade was by certificate; these certificates were recognized or not recognized according to the likes or dislikes of the prince in whose territory the subject found himself.

Other than without intent to return or by certificate the departure could not be legally made. Subjects of one prince in the territory of another with intent or without intent to return, and with no certificate from their prince for identification were regarded with suspicion, treated as men with no rights and often reduced to servile work. Upon subsequent return to the territory of their prince, if the departure was in time of peace, the subject was denied all rights; if in time of hostilities, he was regarded as a deserter. It was the universal custom that the subjects of every prince should be able to identify themselves in legal form, when in the territories of other princes. For it was well recognized, that the duties which such subjects owed to their princes were similar, consequently that no man had the right to be abroad unless with the assent of his prince.

#### MILITARY SERVICE.

The stringency with which these princes enforced their demands on their subjects, was of necessity relaxed, as intercourse for purposes of trade became more important for the welfare of the principalities. The act of departure was attended with less ceremony, and the going and coming between the inhabitants of the numerous principalities became more general.

The prince, in order to maintain his dignity, enjoined upon his subjects the performance of military duty, and although all were not called upon to do this duty, yet the liability remained that they might be. This remained as the duty which the subjects must not avoid without the sanction of the prince. It was a vestige of former authority in the form of absolutism over the subject. It was an obligation arising from fact of birth as a subject of the prince within the domain of the prince. The rule was general and applicable to all subjects.

#### THE CLASSES.

Aside from the grades of nobility as established by the different princes for and among their courtiers, and leaders, either in a military or civic capacity, there remained two general classes for the subject not classed among the nobility.

There was the commercial class and the yeomanry. The necessity of the interchange of goods, wares and merchandise, established the trading class, which was beneath the dignity of the nobility. It came into greater importance with the growth of time, with the increase in population and the demands of the people, which it was imperative should be fulfilled and could only be done by subjects who saw fit to devote themselves to such occupations as would meet these wants. Whatever commodities could be furnished by one principality were wanted in other principalities, and so in return, this necessitating the existence of some class which could interchange these commodities and carry on in detail all that was essential to effect pur-

chase, transportation and sale from one principality to another.

To accomplish this trading, certificates were given for temporary sojourn in foreign countries.

The yeomanry still remained attached to the soil, there to perform their work, subject to such obligations and duties of tenure as the lord of the manor imposed on them as tenants. These duties were manifest and of such a nature that they could not be readily put off. Although in the case of the yeomanry the tie of allegiance was no stronger than it was with the commercial class, yet the departure involved the dissolution of subordinate relations as between landlord and tenant, aside from that fealty which all subjects owed to the prince of the principality. This rendered the departure of the tenant yeoman more cumbersome than was the departure of the trader, because the subordinate duties to the landlord must be legally dissolved, in order that the departure of the yeoman should work no detriment to the interests of the landlord; in many instances the dissolution of these subordinate ties was attendant with extreme inconvenience, which rendered the departure of a yeoman almost impossible.

For example, in case of homage, where the tenant had ungirt himself, and uncovered his head, and, with his lord sitting, had knelt before him, on both knees, and the lord holding his hands, he had said: "I become your man from this day forward, of life and limb, and of earthly worship, and unto you shall be true and faithful and bear to you faith for the tenements that I hold of you saving the faith that I owe under our

sovereign lord." This constituted a most honorable service.

There were other services less honorable. There was *escuage*, by which the tenant was to do service for a specified time abroad with the lord. There was knight service involving wardship and marriage. There was *socage*, which was a service not defined other than knight service. There was *villinage*, which was servile service.

In cases of rent service, the departure was more easy for reason of its being comparatively free from personal duties and allegiance, which was exacted in other services.

#### THE RIGHT OF DEPARTURE.

The sanction of the prince was essential to the exercise of the right. That is, the departure in itself was not punishable; it was the departure without his consent which was punishable. The right of departure was recognized as a right in and of man; but at the same time it could not be exercised legally by the subject without the assent of the prince, under whom the subject lived, and to whom he occupied a personal relation.

#### THE PRINCIPLE INVOLVED IN THE ACQUISITION OF CITIZENSHIP IN THE MIDDLE AGES.

The acquisition of citizenship in a society, whether by membership as one of many who formed a particular society or by subsequent admission to membership in the society after its formation, carries within it the loss of citizenship. The right was regarded as a personal right. Each and every society had its autono-

mous prescriptions by which the membership in the society was acquired and lost. This was governed by rules which went to the manner of acquisition and loss of the citizenship without denying the right in itself. These rules were different and more or less restrictive, yet withal did not deny the existence of the right as being in man nor did they prevent absolutely the exercise of the right.

One prerequisite was essential, namely: the legal release from the society of which one was a member. Then followed the acquisition of a new membership. It is not in all respects clear what the exact status was of the citizen during the interim between the loss of one citizenship and the acquisition of a new citizenship in another society, beyond the rule which seemed to govern quite generally that each prince was held to the exercise of a supervision over his subjects owing to the personal relation existing between them where-soever they might be whether rightfully beyond the confines of the principality or not.

This relation was in many respects so exact that until an absolute change in citizenship had been effected it must have continued.

The correlative right to the *jus albinagii* by which the prince gathered a fine from the estates left by the subjects of other princes on property within his principality, the so-called *gabella hereditaria*, by which he gathered a fine from the estates left by the subjects of other princes in other principalities and which descended to his subjects in his principality, could not have been forfeited by the prince until the change was absolute so far as it affected the rights of the

subject making the change. This was a general rule, and was the common law which governed in most principalities, and was a right of which the princes were very jealous, as a source of income to them. Subsequent to the release from the relation to his prince the subject would seem to have still continued in relations to his prince, notwithstanding the release until the change of citizenship was perfected. In order to perfect the change, there were further requisites: first, evidence of good moral character; second, evidence that the subject had enjoyed the rights of citizenship under his former prince as contradistinguished from servile labor; and, third, evidence either for reason of property, professional calling, or knowledge of some trade, that he was able to support himself and his family.

In case the subject seeking the change was unable to meet these requirements which were conditions precedent to his acquisition of new citizenship which would seem to imply the stigma of crime or pauperism, he was remanded to his former prince, and the change could not be made.

#### THE RULE OF GROTIUS.

Unless there is an express prohibition, or a custom to the contrary, having the force of a convention, the right to emigrate may be fully and freely exercised. This rule, he founds on the natural obligation of preserving oneself which prevails in every agreement, and whoever submits to a government does so solely for his own good.

The rule and the explanation indicate, first, that



government is founded in agreement as between man and man for the good of each; and, second, that the right to leave one government and go to live under another, can be restricted only by convention, to which convention the party who seeks to exercise the right of emigration must be a party; consequently, he must have restricted the exercise of the right by his own act and by convention is bound by it.

This rule thus laid down by Grotius recognized the natural right of man and was in conflict with the philosophy of the times as applied to governments then existing.

In the first place, right became known as a power and no conception of it was recognized except as attached to man; and second, the source of the right was alleged to be in pure reason which was the external, immutable and universal law under this rule.

#### THE RULE OF PUFFENDORF.

Puffendorf asserts "that in becoming a member of society, a man does not renounce entirely the care of himself and his affairs; on the contrary, he seeks thereby an efficient protection under which he may live and labor in security and procure for himself the necessities and conveniences of life." He adds further: "When there is no law on the subject it is necessary to judge by custom of the liberty which each one has in this respect. If nothing is established by custom and there is otherwise no mention made of the matter in the agreement by which a man has become a member of the society, there is no reason to presume that each free person, in entering into society, has not tacitly re-

served to himself, the permission to leave it when he wishes, and that he has pretended to oblige himself to reside all his life in a certain country and not rather to regard himself always as a citizen of the world." He adds further, "That members of a society ought to be permitted to retire to any other place, in which they hoped to better their affairs."

Puffendorf carries out the principles as advanced by Grotius. He attributes to man the exercise of reason and in the exercise of that reason, which is universal and co-extensive with man's being, he finds the source of the law.

#### THE RULE OF BYNKERSHOEK.

A member of a state has the right to remove from a society and thereby renounce his allegiance to the sovereign of the country from which he departed.

#### THE RULE OF BURLAMAQUI.

A man ceases to be a subject of a state when he leaves that state and goes to settle elsewhere. It is a right inherent in every man, that every man should have the right of removing out of the society if he thinks proper.

#### THE RULE OF FOELIX.

A man has a right to change his nationality.

The right in itself is not questioned. It is the exercise of the right subject to such rules of departure and acquisition of a new citizenship as may be prescribed in different countries.

## THE RULE OF RUTHERFORTH.

The only restraint which a man's right is originally under, is the obligation of governing himself by the laws of nature. Whatever rights those of our own species may have over us, is either to direct our actions to certain purposes or to restrain them within certain bounds. Beyond what the law of nature has prescribed, arise rights from some after acts of our own ; from some consent, either express or tacit, by which we have alienated our actions from ourselves to them.

## THE RULE OF VATTEL.

If society has not contracted with the citizen for a determined length of time, he may retire, if he may do so without prejudice to the society. Every man on coming of age may determine for himself, if his interest is to remain as a member of the society in which he was born ; if he thinks not, he may quit it.

There is no obligation from the social compact upon man, to continue in allegiance to the government under which he was born:

## THE RULE OF HEFFTER.

The world is the common fatherland of all human beings. The right of emigration is inalienable. Only self-imposed or unfulfilled obligations can restrict it. This restriction is not a denial of the right in itself ; it enjoins the fulfillment of all obligations to the society of which one is a member before he can acquire citizenship in another state and obtain recognition in the state from which he departed.

## THE RULE OF BLUNTSCHILL.

Man's being extends beyond his state. A man is no more bound to the land of his birth than he is tied to the soil.

## THE RULE OF FRIST.

It is in fact, a principle inherent in human liberty, a principle of natural right that a person may leave the soil on which by chance his birth may have thrown him.

## THE RULE OF DE MARTENS.

It belongs to universal or public law to determine how far the state is authorized to restrict or prevent the emigration of the natives of a country. Although the bond which attaches a subject to a state be not indissoluble, every state has a right to be informed beforehand of the design of one of its subjects to expatriate himself and to examine whether by reason of crime, debt, or of his engagements not being yet fulfilled toward the state, it is authorized to retain him longer. These cases excepted, it is no more justified in prohibiting him from emigrating, than it would be in prohibiting foreign sojourners from doing the same.

## CITIZENSHIP IN THE UNITED STATES.

In no country more than in the United States has this vital question been agitated, and its importance to the United States is very great when we consider for a moment that the United States is now, and has been, ever since its existence as an independent society, the

harbor and refuge for the members of all communities in the civilized world.

The growth of the United States has not been, as was that of Rome, by conquest of neighboring states, to dictate to them, such laws, as by virtue of superior force it was able to do, and thus, by its influence and power proceed to the subjugation of the then known world. The contrary has been the rule in the United States. There was the country, full of resources, which its citizens, in the inception, were neither sufficiently numerous, nor had they the ability, to develop and to accomplish its growth; it opened its arms to the members of all communities in the civilized world, to come to its shores and to enjoy life, liberty and the pursuit of happiness with them. This brought to the country men of laws, manners and customs, which were neither compatible with those of the country which sought their coming, nor were they compatible with each other. They differed from each other in race, in language, in religion, in customs and in the rules of positive law which had been enacted in the community from which they came, for their guidance in that country. They came to a country, which had already announced to the civilized world, its principles and forms of government. For almost a century this has gone on, and to-day the United States contains within its limits, members and descendants of members, from every civilized community in the world.

For this reason, in treating this subject, reference will be made particularly to the United States, and explanations made as to who are considered to be citizens and

who are not. Comparisons will be drawn between the principles which govern citizenship in the United States, and the principles which govern in other communities, such as relate to the means by which one becomes a member, and his right of departure after he has been admitted to full membership. Necessarily, a conflict of these principles may be expected, and the nature of the conflict will be shown and the reasons therefor, at different epochs since the declaration of independence of the United States; for it is since that date, that the questions involved in the rights and privileges of citizenship have arisen. It is since that date, and particularly so, during the past quarter of a century, that commercial relations have necessitated the departure of citizens of one country to reside permanently or temporarily in other countries, not alone for the good of the country from which they departed, but, also, for the benefit of the country to which they migrated, and last but not least, for such advantage and happiness as man might seek and find for himself and family.

At the present time we find citizens of almost every country living in foreign countries and there enjoying such rights and privileges as the positive laws of the country in which they find themselves accord to them—and, furthermore, we find a constant change of citizenship going on, by which the citizen of one country becomes a member of another. The importance of the question cannot be doubted, and it is with attention to citizenship in the United States, that this inquiry is directed.

## IN THE BEGINNING WAS MAN.

Man was a dependent being; he was dependent on his fellow man; alone, by himself he could not exist; he sought protection from his fellow men in time of want and in time of prosperity; he looked to his neighbor in time of trouble; he looked to him for assistance. The one is the guardian of the other's personal rights and rights of property. The one seeks the other for counsel in peace, and defense in danger; his dependency reaches his depravity; his wants oblige society with his fellow man; the relation is mutual.

Man is one of the many creatures of the Almighty, different from other creatures in the properties which he possesses and which nature has given him. With these qualities from his Maker he pursues life, liberty and happiness. To perfect this pursuit, man is given the powers with which to do, not alone the powers, but therewith are further connected certain rights which are a part of his being, which we term his natural rights, rights which are original or innate. By this is meant his nature, and his exercise of those rights is the action of his being or nature. It is the act of man.

In this connection the term "right" is synonymous with "power." It is the use of the power over one's self which is meant, and not over the acts of his neighbor. It is the control of one's own self and the exercise of this control, which is the right nature has given to man. This right to control one's self is recognized by others of the same species for the reason that it is equally pursued by others, and the equality of the power, involving the right, constitutes the equality of

man in a state of nature. These rights exist irrespective of government and involve capacity to take and acquire further rights, which may grow out of the relations into which man enters with his fellow beings, when he organizes or joins society.

#### THE SOCIETY WHICH MAN ENTERS.

The society which man enters is an institution of man. It is an organization of human invention. It is constituted of human beings who seek life, liberty and happiness by the individual surrender of such natural rights as are requisite and essential to their common welfare.

The society is a civilized institution.

The society is composed of members ; a relation of a governed to a governing power prevails over a tract of land common to mankind within which the government exercises rights of authority.

To such a society the term most applicable is state.

The state or society is ever changing and changeable. Its members change in numbers ; some die and some are born during every day of its existence. It changes in form : from kingdom to empire and vice versa ; from kingdom to republic and vice versa. Each and every change, whether in numbers or in form, is the act of man.

In the declaration of independence of the thirteen United States of America, it is primarily set forth in the following language:

“We hold these truths to be self-evident, that all men are created equal ; that they are endowed by their Creator with certain inalienable rights ; that among



these are life, liberty and the pursuit of happiness ; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

In article I, section 1, declaration of rights, state of Alabama, we find : "That all men are created equal ; that they are endowed by their Creator with certain inalienable rights ; that among these are life, liberty and the pursuit of happiness."

Section 3. "That all power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit."

In article II, section 1, declaration of rights of the state of Arkansas, we read : "That all freemen when they form a social compact, are equal, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty ; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

Section 2. "That all power is inherent in the people and all free governments are founded on their authority and instituted for their peace, safety and happiness."

In article I, section 1, declaration of rights in the state of California, we read : "All men are by nature, free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness."

Section 2. "All political power is inherent to the people."

In article II, section 1, bill of rights, state of Colorado, we find: "That all political power is vested in, derived from the people; that all government of right originates from the people; is founded upon their will only and is instituted solely for the good of the whole."

Section 3. "That all persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness."

In article I, section 1, declaration of rights, state of Connecticut, we find: "That all men, when they form a social compact, are equal in rights."

Section 2. "That all political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit."

In article I, section 1, declaration of rights, state of Florida, we find: "That all free men when they form a social compact are equal, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

Section 2. "That all political power is inherent in the people, and all free governments are founded on their authority and established for their benefit."

In article VIII, section 1, constitution of the state of Illinois, we find: "That all men are born equally free, and independent and have certain inherent and indefeasible rights, among which are those of enjoying

and defending life and liberty, and of acquiring, possessing and protecting property and reputation and of pursuing their own happiness."

Section 2. "That all power is inherent in the people and all free governments are founded on their authority, and instituted for their peace, safety and happiness."

In article I, section 1, constitution of state of Indiana, we find: "That all men are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the enjoying and defending life and liberty; and of acquiring, possessing and protecting property; and pursuing and obtaining happiness and safety."

Section 2. "That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness."

In article I, section 1, bill of rights, state of Iowa, we find: "All men are by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting life and property, and of pursuing and obtaining safety and happiness."

Section 2. "All political power is inherent in the people."

In article I, section 1, bill of rights, state of Kansas, we find: "All men are by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting life and property, and seeking and obtaining safety and happiness."

Section 2. "All political power is inherent in the people."

In article XII, constitution of state of Kentucky, we find : "That all men when they form a social compact are equal ; that all power is inherent in the people."

In title I, article 1, bill of rights, state of Louisiana, we find : "All men are created free and equal, and have certain inalienable rights, among these are life, liberty and the pursuit of happiness ; to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

In article I, section 1, declaration of rights, state of Maine, we find : "All men are born equally free and independent, have certain natural, free and inalienable rights, among which are those of enjoying and defending life and liberty ; acquiring, possessing and protecting property, and obtaining safety and happiness."

Section 2. "All power is inherent in the people ; all free governments are founded in their authority, and instituted for their benefit."

In declaration of rights, state of Maryland, we find : "That all government of right originates from the people ; is founded in compact only ; and instituted solely for the good of the whole."

In part I, article 1, declaration of rights, state of Massachusetts, we find : "All men are born free and equal, and have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties ; that of acquiring, possessing and protecting property ;

in fine, that of seeking and obtaining their safety and happiness."

In article I, section 1, constitution of state of Michigan, we find: "All political power is inherent in the people."

Section 2. "Government is instituted for the protection, security, and benefit of the people."

In bill of rights, state of Minnesota, article I, section 5, we find: "The government is instituted for the security, benefit and protection of the people, in whom all political power is inherent."

In declaration of rights, state of Mississippi, article I, section 1, we find: "That all freemen, when they form a social compact, are equal in rights."

Section 2. "That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit."

In the declaration of rights, state of Missouri, we find: "That all political power is vested in and derived from the people."

In bill of rights, state of Nebraska, article I, section 1: "All persons are, by nature, free and independent, and have certain inherent and inalienable rights; among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed."

In declaration of rights, state of Nevada, article I, section 1: "All men are by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty;

acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

Section 2. "All political power is inherent in the people."

In bill of rights, state of New Hampshire, part I, article 1: "All men are born equally free and independent; therefore, all government of right, originates from the people, is founded on consent, and instituted for the general good."

Article 2. "All men have certain natural, essential and inherent rights, among which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and, in a word, of seeking and obtaining happiness."

Article 3. "When men enter into a state of society they surrender up some of their natural rights to that society, in order to insure the protection of others and without such an equivalent, the surrender is void."

In rights and privileges, in the state of New Jersey, article I, section 1: "All men are by nature, free and independent, and have certain natural and inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

Section 2. "All political power is inherent in the people."

In declaration of rights, state of North Carolina: "That all political power is derived from and vested in the people only."

In bill of rights, state of Ohio, article I, section 1: "All men, are by nature, free and independent, and

have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and seeking and obtaining happiness and safety."

Section 2. "All political power is inherent in the people."

Bill of rights, state of Oregon, article I, section 1: "We declare that all men, when they form a social compact, are equal in rights; that all power is inherent in the people; and all free governments are founded on their authority, and instituted for their peace, safety and happiness."

Declaration of rights, state of Pennsylvania: "That all men are born equally free and independent, and have certain natural and inalienable rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety."

In declaration of rights, state of South Carolina, article I, section 1. "All men are born free and equal, endowed by their Creator with certain inalienable rights, among which are the rights of enjoying and defending their rights and liberties; of acquiring, possessing and protecting property, and of seeking and obtaining their safety and their happiness."

In declaration of rights, state of Rhode Island, article I, section 1: "All free governments are instituted for the protection, safety and happiness of the people."

In declaration of rights, state of Tennessee, article I, section 1: "That all power is inherent in the people, and all free governments are founded on their

authority and instituted for their peace, safety and happiness."

In declaration of rights, state of Texas, first: "All men when they enter a social compact have equal rights." Second: "All political power is inherent in the people."

In bill of rights, state of Vermont, chapter I, section 1: "That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, among which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness."

Bill of rights, state of Virginia, section 1: "That all men are by nature equally free and independent, and have certain inherent rights of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: the enjoyment of life and liberty, with a means of acquiring and possessing property, and of pursuing and obtaining happiness and safety."

Section 2. "That all property is vested in, and consequently derived from the people."

In the constitution, state of West Virginia, section 3: "The powers of government reside in all the citizens of the state and can be rightfully exercised only in accordance with their will and appointment."

In declaration of rights, state of Wisconsin, article I, section 1: "All men are born equally free and independent, and have certain inherent rights. Among these are life, liberty and the pursuit of happiness."

These declarations of the United States, and of the many states which compose the union, were not origi-



nal. Already they had found expression in the writings of public jurists on the natural rights of man, the origin of society and public and private international law. It has been a disputed question, and was, when the United States were organized as an independent community.

Among the Orientals we find the theory: "The state rests on the will of God; the state is the work of God." This was theocracy, in which the Jews believed: "That positive law was of God and not of man." In India and Egypt we find jurists, human beings with divine inspiration, as emanators of equity and the source of justice. The Druids of northern Europe were held in reverence, as the receptacles of law from God, through whom it came to the people. The Greeks first discussed the idea and expressed the origin of positive law to be in man.

Aristotle grounds the state on the nature of man, on man's safety and consequently his well being. A citizen of a Grecian state was a particle of the whole, which whole was the state, and partook of the control of its affairs.

Among the Romans, the state was *respublica*; the *jus naturale* of man was fully recognized.

In the middle ages, two sources came into conflict. The Christian church did not hold that government was vested in a worldly prince. Among the Germans a worldly prince was the source of all laws and equity. This was the feudal theory and practice which in varying forms and modifications remained in force for many years, on the continent of Europe and was transplanted to England.

With the downfall of the Roman empire, the pandect of the civilized world lost its authority. The law *jus naturale* became extinct. On the ruins of the Roman empire rose kingdoms and principalities of a barbarous people. Continental Europe was governed by the laws of barbarians. The laws of these people were feudalistic. The relation of man to the prince was dual; through the land, for reason of birth on the land of his prince; and fealty or allegiance to his sovereign to perform military service.

From citizens the Romans became subjects. Their lands were parcelled among the followers of the king, the leaders of whom became counsellors and administrators of justice, taking to themselves titles of their towns and castles, and thus creating a landed nobility, co-extensive with the system of tenures. To give the nobility gentility of blood, they adopted armorial bearings, and the names of their estates for surnames. The privileges of birth thus became susceptible of proof under the customs of their lands. These innovations marked more distinctly the relation of high born to plebeian who could hold no fief.

The allodialists subscribed to the oath demanded by the feudal lords. The vassals became identified with the soil. In many states he was inseparable from his till; he was a "hoeriger" to the land; a quasi immovable. To what extent this power of the prince over his subjects was exercised, is apparent from recent dates, not a century ago, when the Hessian prince sold his subjects to the English king to contend against the struggle for independence of his colonies in America.

It remained for the French revolution to declare to Europe the liberty and equality of man.

From the agitation, which prevailed at about this date in both Europe and America, was evolved anew the principle, that all men were created equal and in them, of them and by them, society and government was organized for the protection of life, liberty and the pursuit of happiness.

The effect of these declarations, to the world, in America, by the declaration of independence, and in Europe, by the promulgation of the code Napoleon, in their respective relations to citizenship, will be apparent. From this date the theory of the feudalists lost support, and at the present time is discounted in the practice of nations.

THE SOCIETY WHICH MAN ENTERS MUST BE INDEPENDENT  
AND RECOGNIZED BY OTHER EXISTING SOCIETIES.

The society must enjoy its own autonomy, free from the influence of other states.

The essentials which make up a society must be evident before such recognition can be granted. There must be members or citizens, territory, government and laws.

The recognition of the existence of another state is not primarily obligatory; it is for the existing state alone for itself to decide when it will recognize a newly created state. The recognition cannot be denied, when the independence is complete. France recognized the independence of the United States earlier than did England. England recognized the independence of states of South America earlier than

did Spain. The European powers recognized the kingdom of Italy earlier than did Austria.

So long as strife exists, by which a people seek to attain independence, and thus create a new state, no state is bound to recognize the would-be state struggling for existence.

The struggles in Poland in 1830–1832; the struggles in Hungary in 1848–1849; the struggles in the confederate states of North America in 1861–1865. The recognition may be considered as premature.

England withdrew her ambassador from France in 1778 for reason of her early recognition of the independence of the United States of America. In 1825, before hostilities were concluded, England recognized the South American states as against Spain. In 1827, England, France and Russia stipulated to recognize the independence of Greece.

In 1830 the five powers of Europe recognized the independence of Belgium despite the protest of the king of Holland.

In 1860 England recognized the Italian kingdom even in the Neapolitan province while Franz II of Naples was struggling to maintain himself in Gaeta and notwithstanding the protests of the Pope of Rome.

The newly created state has the right to demand recognition from the family of nations when its existence is established.

The ancient rule that such recognition rested on simple inclination of an existing state to do so or not, does not find support in the recent practice.

Had France failed to recognize the newly created

North German Union after 1866, it would have been cause for hostilities on the part of Prussia.

The recognition may be too premature, as was the case in 1869 when the house of representatives in Washington recognized the independence of Cuba, while hostilities were pending, which act was not countenanced by the senate and president.

#### FORMS OF SOCIETY.

Man in his compact with his fellow man, by which society is formed, institutes the form of government, by which and under which he will best enjoy life, liberty and the pursuit of happiness. Whatever the form of government may be, under which he and his fellow men join in compact to live, the presumption is, that the government is the institution of man.

The compact is peculiar to the people by whom it is made. It is not for interference on the part of other states to dictate what the compact shall be or the form of government under which they shall live. The misguided attempt of Napoleon III to establish an empire in Mexico is illustrative, undertaken as it was contrary to the rule that right and politics do direct that it is for every people for itself to determine the constitutional form of its international existence. Secretary Seward declared the growth of America to be republican but recognized at the same time that the United States had neither the right nor the inclination to interfere in the Mexican constitutional question as to whether it should be republican or monarchical. He advocated the republican form of government for the Americans and denied the right to European monarchies to interfere in the question.

This modern principle was announced by King William at the opening of the German parliament in his speech from the throne in 1870 as follows: "Among the governments as among the nations of the world the conviction is firmly established that to every individual political community the independent care of its prosperity, liberty and happiness is alone entrusted and is free from foreign intervention."

The compact may be expressed or implied; in either case, he acquiesces in its form, and is bound to perform the duties and obligations which arise from the laws enacted for the good and welfare of the members of the society.

This is purely a state, and not an international question. It does not concern other states. So far as recognition as member of the family of nations is concerned, it matters not whether a state is monarchical or republican in form.

The recognition still remains notwithstanding changes in its form of government.

England had the same international recognition before, during and after the revolutions from 1649 to 1688.

France has had the same recognition notwithstanding the extreme changes in form of government through which she has passed since 1789.

First, there must be a separation of the people as a whole into independent individuals; but a number of such independent individuals do not make a whole unless united.

Second, there must be an equality as between these independent individuals, that is, the one must be

recognized by the others and vice versa as the equal of the others; the particles must be the equal, the one of the other.

Third, there must be an unanimity between these independent individuals for the reason that the agreement necessitates that there should be as among the contracting parties in order that the agreement be valid.

The idea has been advanced that a majority should not contract as among themselves to bind a minority which was unwilling to subscribe to such an agreement. The act of the majority does not in itself bind the minority in this sense. The agreement is one made by the representatives of all who desire to be members, and where the expression of a majority is determined, it remains for the minority to acquiesce. The minority cannot separate from the majority acting in unison. Individually the right exists to depart from the country and seek citizenship elsewhere.

Treaties between the states continue to exist throughout the changes in the form of government, with the exception of personal treaties as between sovereigns when the sovereign loses his throne—then the obligation ceases.

For example: in the instance of King Louis XIV of France and James II of England. The emperor of Austria with the Bourbon princes of Naples; the Emperor Napoleon III with Maximilian.

Treaties ratified at any period by the existing and recognized government with other states are binding on the subsequent rulers, who, by change may govern again after having been driven from power, or who may be called to govern for the first time.

The restored Stuarts in England could not nullify treaties made by the protector, Cromwell. Nor could the French Bourbons disown the treaties made by Napoleon during his regime.

The conduct of the restored king of Piedmont and elector of Hesse in 1814, in treating the interim of their absence from power as a nullity was regarded as pure aristocratic caprice and folly.

It is essential that the state exists and enjoy recognition as an international being.

The interregnum in Venice of Dictator Manin; of Kossuth in Hungary; of the republican governments in Rome, and in Baden in 1849, were not recognized as binding on those states.

#### EQUALITY OF SOCIETIES.

Every society is the equal, the one of the other, regardless of the form of government, extent of territory, or number of members.

"The equality of all states is as much a principle of international law as the equality of all men is an axiom of our independence; therefore, one should not do to a small and weak state, that which one would not do to a large and powerful state, or what we would not suffer if done to ourselves."

The republic of Switzerland is the equal of the empire of Russia in the enjoyment of an international existence and independence, as is the republic of the United States of America with the kingdom of Italy.

While the rule is well established that in the international practice one state is the equal of the other,



yet considerable question has attached to the dignity of the person of the sovereign in monarchical states.

When the Duke Frederick I of Brandenburg assumed the title of king in 1701, grave doubts were entertained as to the justice of his act to the then ruling emperors and kings in Europe. When Peter the Great of Russia assumed the title of emperor, in 1701, other sovereigns were disinclined to recognize him, and it was not done by the German emperor until 1744, by the king of France in 1762, and the king of Poland in 1764. In this century the title of emperor has been assumed by the Austrian king for Austria; by Napoleon for France; by King William of Prussia for Germany; and the title of empress of India by Queen Victoria.

In 1818, when the five great powers conferred at Aix-la-Chapelle, the wish of the duke of Hesse that he be recognized as a titular king was not countenanced.

The assumption by the negro head of Hayti of the title of emperor in recent times did not receive recognition from the sovereigns of Europe.

These matters of title govern the rules of precedence among ruling potentates. In certain practices they govern as to a classification of the respective countries. It must not, however, be considered that the title in itself conditions the rank. The republic of the United States through its president, as also Great Britain through its queen, must rank with the empires of the continent.

England did not lose rank under the rule of Cromwell; the same rank was maintained as under Charles I.

In 1797 the French republic demanded and received

the same recognition as the Bourbon kings had received.

#### TREATIES.

Every society has a treaty making power, through which such relations with other societies are established, as will be to the mutual advantage and benefit of the contracting parties. A treaty is the supreme law of a society.

Treaties are made to continue for a period of time, and involve the integrity of the societies contracting, in their entirety; they are the most solemn relations into which societies can enter. As such they establish principles of law which are to govern the relations of the citizens of the contracting states.

"An obligee, under a treaty can be held to fulfill a disadvantageous and detrimental obligation, but under no circumstances can it be attributed that the obligee, by the treaty, purposes to sacrifice its existence and prosperity."

In the year 1806, the Prussian government issued a manifesto in which it concluded, "that the rights of a nation as a nation take precedence of all treaties."

The reason for this is found in the well recognized principle that it is open to every state, to insure to itself its own independence and existence in order to advance the welfare and well-being of its citizens. At that time treaties were imposed on a weaker state by a more powerful neighbor, and at that time the weaker neighbors of Prussia were suffering from the imposition of Napoleon as well as Prussia herself; and the manifesto was issued more as against France, in order to

bring about an unification of policy among the North German states, and thereby abrogate the treaties which Napoleon had forced upon them.

A manifesto of this same tenor in more modern times, when Prussia was in pursuit of acquisition of more power by subjugation and annexation, as of Schleswig-Holstein, and later the kingdom of Hanover, the duchy of Hesse-Cassel and the free city of Frankfort would not have availed in any instance had it been made by any of these states.

This principle as enunciated by Prussia has maintained its position in the practice.

In 1870 Lord Granville laid down the principle to be simply this: that by a treaty one nation bound another and thereby surrendered a portion of its individual liberty to act and to do; but it still remained in the power of the contracting parties to bring within its own peculiar control the stipulating of the treaty and thus remain no longer bounden by it than it should see fit.

This rule would seem to imply that with proper notice a treaty can be abrogated, in cases when it was not made to continue for a determined period of time.

#### SOCIETY WITHOUT MEN.

The world is the common fatherland of all beings. Among them, by them, and of them society is formed, to protect them in life, liberty and the pursuit of happiness. Society without members would be a nullity; no people, no society.

An instance of the total annihilation of a society not alone as a society depriving it of its members but also

of its territory and disregarding its form of government, was the partition of the kingdom of Poland between the empires of Russia, Austria and the kingdom of Prussia.

#### MAN ENTERS SOCIETY.

The dependence of man teaches him his wants. This is a feeling common to mankind. He seeks relief for the feeling of dependency, and assumes such relations in society as will best serve the promotion of his own welfare. To do this he enters society. He does not renounce to the other members of the society which he enters the entire and complete control of his nature; he permits certain restrictions such as are necessary for the common good.

Of these restrictions the citizens of the society of which he seeks membership are the judges and he assumes such as exist at the time he enters the society as a member and remains subject to them so long as they exist and become subject to others which the citizens, of which he is one, deem necessary should exist for the welfare of the society.

#### MAN ENTERS SOCIETY BY POSITIVE LAW.

The men who form society become members thereof by compact or agreement with each other. This compact is the foundation on which society rests. The compact is a positive agreement, and rules of conduct enacted by the governing power for the guidance of the members of the society are positive laws. When a society is once formed, one, not a member of the society, becomes a member, or, if a member, absolves his membership by positive law, based on the law of na-

ture. In case of positive law, it is expressed; in case of custom, it is implied.

#### WHAT MAN SURRENDERS TO SOCIETY.

Man, in his natural state, has certain innate rights, which rights are absolutely in him, and of which he cannot entirely and completely divest himself, or be divested, by positive law.

Possessed of these absolute rights, he has further the power to assume relative rights, such rights as grow out of membership of the society through the relations into which he enters, with his fellow members.

The absolute right of man is the power of acting as he sees fit, when in a natural state and when in society, he restricts this absolute right in conformity to the same restriction which others who enter into the compact on which society is based, permit to be imposed on them. Man permits these restrictions on his natural and inherent rights, in order to obtain better protection to life and liberty, in the pursuit of happiness. In return for this protection which is accorded him, he assumes duties correlative to the rights which he acquired.

#### WHAT MAN RESERVES TO HIMSELF.

Man reserves to himself the right to withdraw to his natural state, in which man was before he joined society; or to join another existing society. The manner in which the withdrawal shall be made is entirely a matter of positive law of the society from which he seeks to withdraw.

The withdrawal legally completed, according to the positive law of the state from which he withdraws, ab-

solves the member withdrawing from all control of the governing power of the society from which he absolves himself and leaves him free and independent to seek membership elsewhere. Where no positive law exists prescribing the manner of withdrawal, the right still exists in man to withdraw. The right is found implied in the organization of the society.

In the exercise of the right of withdrawal he does not deprive himself of the right to protection from the society from which he withdrew until he has acquired membership in some other existing society.

The right to withdraw and the withdrawal in itself in the exercise of the right does not constitute membership in another state until the party withdrawing has complied with the laws of the state in which he seeks membership and has been admitted to membership in that state.

#### MAN'S VOLITION.

Man's act in joining society and his act in withdrawing therefrom, must be peculiarly his own. They must be acts of his own volition. He must join society of his own free will and must withdraw legally of his own free will.

The society of which he is a member cannot force him to withdraw and become an exile in a foreign society, no more for a political wrong, than it can for a criminal wrong, or for reason that the member is a pauper. No society is an asylum to which another society can send its members. A society can receive whomsoever it pleases; but there is no obligation by which it can be compelled to receive those whom it

does not want. Such persons can be returned to the society by which they were sent and the society to which they are returned must receive them.

The exercise of volition presupposes that the person who exercises it has and is of the legal age so to do. This age is not the same in all countries; it is an age determined by the positive law of each society for its own good and benefit.

#### THE SOCIETY MUST HAVE LAWS.

The society of the state which man joins must have laws. These laws are termed positive because they are enacted for the special society in which they are to have force. They are the outgrowth of man's nature to meet such emergencies and promote such prosperity, as the general utility of the society demands. They have a particular application to the defined territory of the society.

The term positive is used in contra-distinction to natural, which natural law man restricts by the positive law, to meet such rules of conduct as will best govern the members of society in their relations to each other. These laws of the society, which are termed positive, are the fabric of the government, which is an institution of man.

The natural law is universal, the positive law is territorial.

#### THE LAWS ARE ENACTED FOR THE UTILITY OF THE SOCIETY.

However so much the positive law of one society may differ from the positive law of another, the rule is: that, in either case, the laws are enacted for the

common good of the members of the society within which territory the laws are enacted. It is not open to one society to do any act by which to make any change in any existing law which governs in another society. Such laws are purely autonomous and do not concern other societies. This is the general rule which governs among civilized countries. In the interests of humanity argued from the standpoint of religion there are many instances of interference on the part of civilized societies in the affairs of barbarous and irreligious communities. Nor can countries debar themselves from intercourse commercially with other countries. This position was taken by Great Britain and the United States in regard to China and Japan, both of which countries were forced to open their ports for trade with the civilized world and for reason of the rule which follows: "As the laws of each particular state are designed to promote its advantage the consent of all or at least the greater number of states may have produced certain laws between them. And in fact it appears that such laws have been established tending to promote the utility not of any particular state but of the great body of the communities."

#### RIGHT AND DUTY IN THE SOCIETY.

The laws of every society prescribe rights and duties which the members must perform, to preserve the integrity of the society. Each member must voluntarily assume the obligations prescribed by the laws of the society, when he seeks membership, in return for the rights which he enjoys. The presumption must be that he is knowing to the duties, to which he sub-



scribes when he enters the society. There can be no hidden obligations or duties from which a member cannot in some manner be absolved. Immutable obligations, which follow man, as it were a part of his being, cannot be enforced, are contrary to man's nature and are obnoxious to modern civilization.

EXERCISE OF RIGHTS AND PERFORMANCE OF DUTIES DEVOLVE EQUALLY ON ALL.

Each and every member of society must enjoy equal rights, equal privileges, and the duties and obligations must be equal, in order to insure the perfect enjoyment of life and liberty and the pursuit of happiness.

Unequal rights and privileges and duties, at home, necessarily involve the same relations abroad. Equality before the law, at home, insures equality of protection to one member of society as to another, when abroad.

The first portion of this rule finds reason in the existence of certain personal treaties as between ruling sovereigns, which regard more the family relations as between ruling families and their immediate ranks of nobility, which do not extend to their subjects. They concern the sovereign family as a family more than the state as a state which would include their subjects. Such treaties are often known as alliances, by which a powerful sovereign agrees to protect a weaker prince and maintain him on his throne. The relation thus created entitles certain classes to special privileges in the respective countries which enter into the alliance. The working of this same rule was more evident in European countries than elsewhere. In those countries in which there was a classification of the people; in which certain civil rights were accorded to one class

and denied to another ; while the rule was enforced with stringency at home it did not lose its force abroad ; the citizen was supposed to move in the same class when abroad as when at home. This was also the case with the Jews who were accorded no civil rights until quite recent dates. When abroad, it was their own race to which they looked for protection, not to the country from which they came and of which they were quasi-subjects. It was much the same throughout the periods of religious agitations.

#### HOW EXISTING OBLIGATIONS ARE INQUIRED INTO.

It is optional with a member of society to exercise his rights and privileges ; it is obligatory to perform his duties. The governing power redresses an infraction of the former, and enforces the performance of the latter.

These duties are created by positive law and are determined by the positive law of the society of which one is a member ; and the local tribunals of the society can alone adjudicate and inquire into the obligations and duties devolving on the members. When a member has performed these obligations, the local authorities finally determine.

The question is autonomous, and the tribunals of other societies have no jurisdiction to decide and give any effect to their decision, within the confines of the society where the question of duty arises on the relation of a citizen to his government.

#### THE DIVISIONS OF GOVERNMENT OF A SOCIETY.

The government of a society falls into three departments, and to each department are assigned powers.

The assignment of these powers is found in the compact by which society is formed. These departments are known as the legislative, the executive and the judiciary.

In the legislative department, rules of conduct and other necessary laws for the government of the members of the society are enacted.

In the executive department, is the power by which the laws enacted by the legislative department are enforced.

In the judiciary department, are interpreted the laws enacted in the legislative department.

#### WHAT CONSTITUTES FULL MEMBERSHIP OR CITIZENSHIP IN A SOCIETY.

Full citizenship is the enjoyment of all the rights and privileges which the laws of a society allow to its members when at home, and equal protection when abroad. It consists of:

First. In the privilege accorded to members of participating in the legislative branch of the government, of legislating and being represented in the legislative department.

Second. Subjection to the executive branch.

Third. The right to have rights determined and wrongs redressed in the judiciary department.

Fourth. There being no grades or degrees of citizenship, the privilege to call for protection from his government when abroad equally with other citizens of the state of which he is a member.

“In regard to the protection of our citizens in their rights at home and abroad, we have no law which

divides them into classes or makes any difference whatever between them." 9 Op. Atty-Genl. 356.

#### MAN IS EITHER A CITIZEN OR AN ALIEN.

In the society in which man lives, he is either a citizen or he is an alien. The distinction is this: that an alien enjoys the same rights and protection in the community as does the citizen, excepting the privilege of participating in the legislative branch of the government, of legislating and being represented in the legislative department.

There is no intermediate relation to the society.

The rule which governs as to aliens within the United States is found in *Carlisle vs. United States*, 16 Wallace, 148, "Aliens domiciled in the United States owe a temporary and local allegiance to the government of the United States; they are bound to obey all the laws of the country not immediately relating to citizenship during their residence, and are equally amenable with citizens for any infractions of these laws."

#### HOW MAN BECOMES A MEMBER OF SOCIETY.

The rules which govern the acquisition of citizenship are not identical. There is and has been a want of uniformity in the positive laws of states on this subject, and consequently in the practice.

The two sources of the law of government, the one as based on the feudal law and the other as based on the natural law of man, and the recognition by society of certain inalienable rights in man, are in conflict.

## CITIZENSHIP BY BIRTH — THE ENGLISH RULE.

This is the doctrine of England, and has been for centuries. By the common law of England, the rule was established that every person born within the dominion of the crown, no matter whether of English or of foreign parentage, and in the latter case, whether the parents were settled or merely temporarily sojourning in the country, was an English subject.

This doctrine was carried further by the statute 7 Anne, chapter 5, section 3: "The children of all natural born subjects, born out of the allegiance of her majesty, her heirs and successors, shall be deemed, adjudged and taken to be, natural born subjects of this kingdom, to all intents, constructions and purposes whatsoever."

The doctrine was carried still further by statute 4 George II, chapter 21, and 13 George III, chapter 21, by which the children or grandchildren of English subjects born out of the allegiance of his majesty, his heirs and successors, could not throw off their allegiance to the British crown.

## DO THESE RULES BEAR WITHIN THEM A SPIRIT OF CONTRADICTION ?

First — for what reason under the rule of the common law, did one become a subject of the crown? The answer is plain; it was for reason of the principle of the feudists, as found in the *jus soli*; by birth on an inanimate piece of land, was created a relation to that land which was immutable. Not alone was the rule applicable to those children whose parents were held in an immutable relation to the piece of land on which they were born, but also, to the children of parents

who were or who were not held in an immutable relation to a piece of land in some other country than England.

For reason of intentional or accidental birth within the realm of Great Britain, the immutable relation to the soil was established, regardless of the parentage of the parent, whether English or foreign.

This rule was hedged in by another rule: "*Nemo exure potest patriam*," which was designed to enforce the rule of the feudists, that man was an immovable and belonged to the piece of inanimate land on which he was born, there to remain and abide, subject to his lord, the king.

Second — for what reason did children of English parents when born without the liganage of the crown become subjects of Great Britain? It could not have been nor can it be, for reason of any immutable relation to the inanimate piece of land on which the child was born. It was not pursuant to the common law rule of England. This rule had no force out of the realm. The explanation is here: The rule as laid down in 7 Anne, chapter 5, section 3, and subsequent statutes, extending the rule to children and grandchildren, was passed at a time in the history in England, when the inflexible nature of the common law rule must be changed. Subjects of England, for commercial and similar purposes must sojourn in foreign countries. Therefore in accordance with that broad principle known to the English law at that period, by which solemn jugglery was permissible, the feudal theory, which was contained in the principle found in *jus soli*, was relaxed.

Permits to depart from the realm were granted and the theory of a personal relation to the sovereign was created, which was held to be as equally immutable as was the theory of an immutable relation to an inanimate piece of land, which it superseded. This was the first extension of the rule of allegiance to the children of English subjects born out of the realm. Allegiance was not unknown to the English law at this time; it was adjunctive to the theory of *jus soli*, and was considered as the connecting link through an inanimate piece of land, by which an English subject was bound to his sovereign.

The term used in the statute is "ligiance," meaning the realm, within which allegiance was due to the sovereign; allegiance being immutable within the realm by the statute, it was made equally binding on English subjects without the realm; not alone on them, but also on their children and children's children in foreign states.

#### WHAT WAS THE EFFECT OF THESE RULES ?

A subject of a foreign power born in England became a subject of Great Britain. A subject of England born in a foreign country remained an Englishman, as did his children and his children's children. Suppose in the foreign state to which an English subject migrated, the same rule as was laid down by the English common law prevailed; for example, in Spain; what would be the citizenship of the child born of English parents, sojourning in Spain? Under the Spanish rule it would be a Spaniard, but under the statute of Anne it would remain an English subject. Reverse the proposition. A child of Spanish parents born in England

would be an English subject, providing, however, if a similar statute prevailed in Spain to the statute of Anne, the child would be a Spaniard.

The unreasonableness and impracticability of these rules are self-evident. They were an impediment to social intercourse between countries for the advancement of arts, sciences and commerce; they were restrictions on the natural rights of man; an interference with man's enjoyment of life, liberty and the pursuit of happiness. It was an attempt to make the English law the law of the world.

The enforcement of the rule became impracticable and was abandoned.

THE LAW AS TREATED BY ENGLAND IN HER RELATIONS TO  
HER SUBJECTS IN FOREIGN COUNTRIES.

In this connection the rule of the English common law and the statutes hereinbefore referred to must be borne in mind.

With the Argentine Republic: In this country, citizenship by reason of birth was the acknowledged principle. Not alone did this apply to children of citizens, but also to children of aliens born within the country. In this regard, the law was precisely the same as in England.

In 1845, Sir Robert Peel expressed an opinion on the question. It appeared that the general law was this: that the son or grandson of a British subject born abroad was also a British subject. But he could not deny that children born in a foreign state were not also subjects of that state.

Such was the law in this country, for the children



of foreigners born in her majesty's dominion were British subjects. If the children of British residents, born at Buenos Ayres, were born out of that state, the authorities there had no right to make them Buenos Ayres' subjects. If, however, the children of British subjects were born at Buenos Ayres, and continued to reside there, they retained the rights of citizens of that place, but with those rights they also imposed on them, the burdens and duties of citizens, and they were liable to the laws of Buenos Ayres.

The position taken by Mr. Peel, was a perfect recognition of the force of the laws of the Argentine Republic, and the right of that government to enforce military duties, and actual services on children of British subjects born within the country.

This enforcement caused considerable discontent, and such English subjects received this satisfaction from Lord Palmerston: "That a British subject could not divest himself of his allegiance by submitting to any local enactment compelling him to wear any particular uniform or badge in a foreign country, in which he may think proper to reside, and that he does not thereby forfeit his right to be protected by his own government."

Notwithstanding this, British subjects were called upon to serve in the national guard of the country until the year 1858, when the government of Buenos Ayres passed a law permitting its subjects to furnish substitutes for service in the national guard of the country. In so doing, they did not distinguish in favor of those born in the country, whether of citizens or aliens.

Later a treaty was proclaimed between the two countries, to which the right of choice as between English and Argentine Republican citizenship was given to English subjects.

After this treaty, all the questions were decided by reference to the acts of the subject claiming protection, whether he had made a choice or not. If none had been made, and he had failed to optate to become a subject of England, he was held as a subject of the Argentine Republic.

WITH AUSTRIA. In 1833, the Austrian government issued a decree that all foreigners, who at that date had resided uninterruptedly in Venetia and Ionia for ten years, were allowed to free themselves from Austrian citizenship, upon proof that they had no intent of becoming Austrian subjects. The proof was to be furnished within six months. The effect of this was, that many former British subjects were claimed as Austrians.

Lord Palmerston declared, that according to Austrian law, they were liable to be considered as Austrian subjects and consequently were not entitled to exemption from burdens for reason of their claiming English citizenship.

WITH BELGIUM. Here the question arose as to the rights of naturalized English subjects in Belgium. It was inquired as regards children of naturalized British subjects born abroad. The answer was that such children follow the citizenship of the father during minority.

But this is, of course, subject to the local law which may deal with children born in the country, whatever .

may be the circumstances of their fathers, as natural born subjects of the country in which they were born.

WITH BRAZIL. By article VI of the constitution of Brazil, the offspring of all foreigners born in Brazil are Brazilians, with the exception of those born foreigners who may be in Brazil, in the service of their own state. The English government failed to bring about a change in the Brazilian constitution, and the law remained the same as it was in the Argentine Republic, prior to the treaty between that country and England.

The demand of the English government was to the point that children of English subjects, born in Brazil, should follow the citizenship of their parents to the age of twenty-one and then optate to remain Brazilian subjects or become English subjects.

This desire to have recognized the rule that the child follows the citizenship of the parent, and was a citizen of the country of which the parent was a citizen, regardless of place of birth, was in conflict with the English rule. The Brazilian government did not accede to the demand.

WITH COLOMBIA. Only once the question arose, and that was the case of Montaya, who became a naturalized subject of England. The English authorities held that this fact did not exempt him from the operation of the law of the state of his birth and natural allegiance while he resides in that state.

WITH DENMARK. The case of Rainals demanded much attention. Rainals was born in Denmark, of English parents. The Danish law decides that chil-

dren of foreigners born in Denmark can claim citizenship in Denmark after a continued residence up to the eighteenth year. Rainals took an oath to the Danish crown, and notwithstanding this, he claimed British protection.

Lord John Russell took the position: "It is not denied that Mr. Rainals was born in Denmark, and although he renounced citizenship, this does not relieve him from the obligations of allegiance to the crown of Denmark.

WITH FRANCE. Many questions arose between these countries and were much debated until the year 1857, at which time Lord Clarendon laid down the law of England, as follows: "The children of British subjects, although born abroad, if their fathers or their grandfathers by the father's side were natural born subjects, are, by certain British statutes, to be deemed natural born subjects themselves to all intents and purposes in England. But neither these statutes nor the general principles of English or international law, or of reciprocity or comity, so far as Great Britain is concerned, would justify her in maintaining that such persons are British subjects within the true intent and meaning of a treaty with a foreign nation, in which their case is not specially provided for, or in contending that they are, while residing in such foreign country, exempt from the obligations incident to their status as natural born subjects or citizens of such foreign country of their actual birth and residence. Great Britain may confer on them any privileges as far as her own territories are concerned, but no such privileges can avail as against, or in derogation of their

antecedent natural and legal obligations to the country of their birth."

In 1858 the Earl Malmesbury expressed the following opinion in the Walewski case: "If Walewski had been born in France of English parents and had voluntarily returned to France, he would have been a British subject in England, but he would not have been entitled to British privileges or protection in France as against the country of his actual birth and domicile. But Walewski was born in England and as such is a natural born subject of her majesty."

In 1859 Lord John Russell laid down the rule as to naturalized subjects: "That they are not entitled to British protection upon return to the country of their birth."

WITH GERMANY. In 1863 Lord John Russell gave his opinion as to the status of native Germans naturalized in England: "that a foreigner who has become a naturalized British subject cannot claim British protection against the operation of the law of his native country, so as to exempt himself from any penalties which the law of his native country may inflict upon him when he returns to it."

WITH THE HANSE TOWNS. Lord Palmerston laid down the following instructions for those states:

"I have to authorize you to give way to the liability of British subjects to serve in the civic guard for the protection of the city in which they reside, but you should strenuously resist any pretension to require British born subjects, whether admitted or not to the rights of citizenship, to serve in the contingent; because that contingent is not a force raised and embodied for

the maintenance of order within the city and state, but is a portion of the army of Germany and is organized for the purpose of foreign war. It thus might happen, not only that British subjects might be brought, and even against their will, into conflict with troops of a state in amity or alliance with England, but that they might actually be compelled to take the field against the troops of their own country and sovereign."

The case of Bosdet presents an opinion of the law where it is identical as it was in England. Bosdet was born in England of parents natives of Hamburg, who were domiciled in Hamburg at time the services were demanded of his son. The foreign office decided as follows: "The fact that Alfred Bosdet was born in England, confers on him, according to the law of this country the character of an English subject; and there arises or may arise in these cases a conflict of jurisdiction. But as the law of England also considers the son of a native subject, wherever he is born, as an English citizen, the English government cannot fairly complain of the law of Hamburg, which is in this respect the same, nor can it interfere with the execution of that law within the town of Hamburg. You may accordingly present to the authorities of Hamburg, that Alfred Bosdet has become an English subject, and ask as a matter of comity that his name may be therefore taken off the military list. This cannot be insisted on as a matter of right."

WITH GUATEMALA. The same controversy arose as with Buenos Ayres, and the English government was unable to maintain its position until 1859 when it was decreed that children of English subjects born in

Guatemala should follow the parentage of the parent until the age of twenty-one and then optate to become English subjects or remain Guatemalans.

- **WITH ITALY.** The leading case in Italy seems to be the case of John Vertu, born in England of Sardinian parents. The Italian government contended that he was a citizen of Italy. Lord Palmerston expressed the following opinion: "I have now to state that as a general principle, children of alien friends born in the British dominions become, *de facto*, subjects of Great Britain, although not absolutely, and in all cases to the entire cessation of all bonds, privileges and duties which might attach to them, as children of the state to which their parents might belong, particularly when they themselves return to and abide in their parents' country, and claim to be, and act as subjects thereof. The right to be considered as British subjects, if fully and completely acquired, and not abandoned or forfeited, may be lawfully extended to them in the foreign state of which their parents were subjects; and it is not necessary in order to render his children British subjects, that an alien friend transferring his domicile to Great Britain, should previously have obtained his legal liberation from his duties and obligations to the state to which he had originally belonged."

The leading case with the Neapolitan government, was the case of Benedict and John Steuart. The father was an English born subject, and married a Messinese; the children were born in Naples, and the question arose as to their citizenship. The position taken by the Neapolitan authorities was as follows:

“That the father having been born in England, was an English subject, and unless his sons, on coming of age declared their intention of being naturalized, and had gone through the formalities prescribed by the Neapolitan law for that purpose, they remained British subjects.”

WITH NORWAY. The leading case was that of Walter Foreman. Foreman was a native born subject of England, and had acquired a domicile in Norway. He was conscripted for military service under the Norwegian code, “foreigners who have acquired a domicile in the country are rendered liable to military duty.” He was advised to try the case in the courts. In this, however, he was dissuaded on the grounds of equity, that in the absence of a convention with England, by which he would be exempt, he could not claim exemption on the ground that Norwegians were not subject to any such military service in England.

WITH PORTUGAL. The government of Portugal claimed as subjects the children of all subjects whether of Portugal or aliens born within the kingdom. This position was denied as being correct in its application to children of British subjects born in Portugal. As a result of the controversy, Lord Aberdeen in 1843, expressed the following opinion: “Although by the statute law of this country (England), all children born out of the allegiance of the king, whose parents or grandparents by the father’s side were natural born subjects, are themselves entitled to enjoy British rights and privileges while within British territory, yet the effect of British statute law cannot extend so far as to take away from the government



of the country, in which these persons may have been born, the right to claim them as natural born subjects, at least so long as they remain in that country."

"By the common law of England, all persons born within the king's legiance, whether the children of British subjects or of foreigners, are deemed to be subjects of Great Britain. And if the law of any foreign state, upon this point be the same as the English law, and if such foreign state places persons born within its territory upon the same footing as its own subjects or citizens, the government of that state has the right to exact the service of a subject from such persons, even if they may have been the children of foreigners, at least while such children remain in the country of their birth."

WITH PRUSSIA. The leading case, is that of Cross-thwaite, who was her majesty's consul, and a naturalized subject of Prussia. The question was, whether his sons were liable to military duty. It is not stated where the sons were born. The opinion was, "that the sons of a naturalized Prussian subject owing allegiance to her majesty who are between the ages of seventeen and twenty-five and are resident in Prussia would be compellable to serve in the Prussian army."

WITH SPAIN. In 1841 the English government gave notice to its consuls in Spain that it would not protect the children of English subjects born in Spain as against the laws of that country. In 1856 children of English subjects born in Spain made claims on the English government for protection.

Lord Clarendon decided that their claims were inadmissible as against the claim made on them by Spain.

The leading case is that of Joseph Argumiborn; at the term of his birth his father was domiciled in Spain, but as an English subject. The English government held that the son was not entitled to claim British protection against any obligations arising from his Spanish allegiance, although by an English statute he would be entitled to the privileges of a natural born English subject in Great Britain.

WITH THE UNITED STATES OF AMERICA. The inflexible rule of the English law was broken by the treaty with the United States in 1783. Prior to the ratification of this treaty the colonists in America were English subjects owing allegiance to the English king. The common law and the statute law were in full force in the colonies. By this treaty, the English king acknowledged the United States to be free, sovereign and independent states, that he treats with them as such and for himself, his heirs and successors relinquishes all claim to the government, proprietary and territorial rights of the same and every part thereof.

There remained for some years posts and places within the territory of the United States occupied by English troops and garrisons. In 1794 a further treaty was entered into, by which these troops and garrisons should be withdrawn and the right of option granted to English traders and settlers, within the territory of the United States to become citizens of the United States or remain English subjects; they should not be compelled to become citizens of the United States but could remain as English subjects; they were obliged to exercise the right of option within one year from the

evacuation by the troops and garrisons as stipulated in the treaty. The declaration to become citizens of the United States must be made to the government of Great Britain, otherwise such traders and settlers were to be considered as citizens of the United States.

Other than these no act was passed by the law-making power of Great Britain, by which citizens of the United States were to be treated as citizens and entitled to protection as such, within the realm of the English king.

WHAT WAS THE EFFECT OF THIS TREATY BY WHICH THE  
RIGHT OF OPTION WAS GRANTED ?

The English subjects who did not exercise the right of option within the year did not for reason of the terms of the treaty become ipso facto citizens of the United States. Further acts on the part of the subject were essential. His failure to declare his intent to his government to become a citizen of the United States did not confer citizenship. He could do so only by becoming naturalized in accordance with the act of naturalization, of date January 29, 1795.

Until this act had been complied with there is no question that any change in citizenship was perfected.

In case the change was made without the declaration of the intent to make the change to the government of England, then a complete change of citizenship was not effected for reason that it lacked the essential element of consent express or implied of the English king, by which allegiance was absolved.

## TO WHOM DID THE TREATY OF 1783 APPLY?

The application of the exception made by England was only to colonists then living, and traders and settlers who optated to renounce their allegiance to the English king, and become citizens of the United States. Neither the common law of England nor the statute law were altered. Both were retained and recognized as the English rule pertaining to English subjects, whether born within or without the realm of England. English subjects who subsequently migrated to the United States could not then throw off their allegiance to the English sovereign. No law, which was in force in the United States, by which they could comply, could release them from their allegiance, and excuse them from service to their king, when again within his realm. The exception to the English law, as made by the treaties of 1783 and 1794 did not have reference to English subjects who were not colonists and as such were recognized as citizens of the United States, nor to the traders and settlers who remained within the territory of the United States, and were given the right of option at the time of the withdrawal of the troops and garrisons as stipulated in the treaty.

## THE EFFECT OF THIS RULE AS TO THE UNITED STATES.

The English rule remained unchanged; the right of an English subject to renounce his allegiance was denied; the rule extended to and included the third generation, each of which were English subjects, by the English law.

Suppose that an English subject migrated to the

United States and there became a citizen according to the positive law of the states, what would be his relation to the English sovereign? It would remain unchanged under the English rule, and the English sovereign could demand the services of such a subject who had become a citizen of the United States, if found within the realm of Great Britain.

It is true that one of the causes which led to the war of 1812 between England and the United States was the impressment of English subjects, who had become citizens of the United States, into the service of the English king.

The war ended, and the question remained unsettled. The treaty failed to recognize the right of English subjects to throw off their allegiance and become citizens of the United States.

It may be argued that this right was tacitly implied, for reason that no occasion arose to agitate the question again. Such an argument could not prevail against positive laws legally promulgated in either the courts of the United States or Great Britain. Had the right been recognized it would have been declared by both countries. As no recognition was given to it, it follows that the law remained unchanged. It was not until the year 1870, when the question was taken up, discussed and formally settled. At that time the president of the United States and the queen of the United Kingdom of Great Britain and Ireland, being desirous to regulate the citizenship of citizens of the United States of America who have emigrated, who may migrate, from the United States of America to the British dominions; and of British subjects who have

emigrated or who may emigrate from the British dominions to the United States of America, have resolved to conclude a convention for that purpose; it was concluded as follows:

The President of the United States of America, and her majesty, the Queen of the United Kingdom of Great Britain and Ireland, being desirous to regulate the citizenship of citizens of the United States of America, who have emigrated or who may emigrate from the United States of America to the British dominions, and of the British subjects who have emigrated or who may emigrate from the British dominions to the United States of America, have resolved to conclude a convention for that purpose, and have named as their plenipotentiaries, that is to say: The president of the United States of America, John Lothrop Motley, esquire, envoy extraordinary and minister plenipotentiary of the United States of America to her Britannic majesty; and her majesty, the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable George William Frederick, earl of Clarendon, Baron Hyde of Hindon, a peer of the United Kingdom, a member of her Britannic majesty's most honorable privy council, knight of the most noble order of the garter, knight grand cross of the most honorable order of the bath; her Britannic majesty's principal secretary of state for foreign affairs; who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

## ARTICLE I.

Citizens of the United States of America, who have become, or shall become, and are naturalized according to law within the British dominions as British subjects, shall, subject to the provisions of article II, be held by the United States to be in all respects and for all purposes British subjects; and shall be treated as such by the United States.

Reciprocally, British subjects who have become, or shall become, and are naturalized according to law within the United States of America, as citizens thereof, shall, subject to the provisions of article II, be held by Great Britain to be in all respects and for all purposes, citizens of the United States, and shall be treated as such by Great Britain.

## ARTICLE II.

Such citizens of the United States, as aforesaid, who have become, and are naturalized within the dominion of her Britannic majesty as British subjects, shall be at liberty to renounce their naturalization, and to resume their nationality as citizens of the United States, provided, that such renunciation be publicly declared within two years after the exchange of the ratification of the present convention.

Such British subjects, as aforesaid, who have become and are naturalized as citizens within the United States, shall be at liberty to renounce their naturalization and to resume their British nationality, provided, that such renunciation be publicly declared within two years after the 12th day of May, 1870.

The manner in which this renunciation may be

made and publicly declared, shall be agreed upon by the governments of the respective countries.

### ARTICLE III.

If any such citizen of the United States, as aforesaid, naturalized within the dominions of her Britannic majesty, should renew his residence in the United States, the United States government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a citizen of the United States; and Great Britain shall not, in that case, claim him as a British subject, on account of his former naturalization.

In the same manner, if any British subject as aforesaid, naturalized in the United States, should renew his residence within the dominions of her Britannic majesty, her majesty's government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a British subject, and the United States shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

### THE EFFECT OF THE ACT AND TREATY OF 1870 IN THE UNITED STATES.

The retroactive effect which it was intended the act should have, is conclusive that the rigidity of the English rule of the common law and of the statutes of Anne and the Georges had not been relaxed to that date.

The relation of British subjects who had migrated



to the United States, and there become citizens, had remained unchanged under the English law.

By the law of the United States they were regarded as citizens of the United States; they had abjured allegiance to the English sovereign without right.

Could such citizens enjoy full rights and privileges in the United States and equal protection abroad with other citizens? They could not. There their relation to the English sovereign had not been changed; they owed allegiance, if within three generations of English descent, which was immutable. They were not in the enjoyment of full citizenship. They were not citizens at home and abroad as citizens should be with full recognition as such.

Assume that the son of an English subject, whose father had become a citizen by naturalization, in the United States, had gone to England prior to 1870; what would have been his legal status under the English rule? It is perfectly clear. No doubt, to have impressed him into the sovereign's service, would have caused the rise of unfriendly feelings between the two countries, yet this might not have changed the law, any more than it did in 1812, at which time the question was vividly discussed in both countries.

By the act of 1870, the acts of British subjects who have abjured the realm, under the naturalization laws of the United States, have been legitimatized, and by it they have been admitted and recognized to enjoy full membership both at home and abroad; which rights they did not enjoy prior to 1870.

The rule which governed prior to the passage of this act is found in Warren's case, 12 Op. Atty.-Genls.:

"It is well established English law that a native born subject of Great Britain is not capable of throwing off his allegiance."

Lord Grenville, in his despatch to Secretary King, March 27, 1797, declares, "No British subject can by such form of renunciation as that which is prescribed in the American law of naturalization divest himself of his allegiance to his sovereign. Such a declaration of renunciation by any of the king's subjects, would, instead of operating as a protection to them, be considered an act highly criminal on their part."

In *Fitch v. Webber*, 6 Hare, 51, the rule is as follows: "Abjuration by a British subject of his allegiance to the crown and his promise of obedience to a foreign state, although it might make him liable for high treason, does not divest him of the character of a British subject, and does not disqualify the children or grandchildren of such British subjects of being British subjects."

DID THE UNITED STATES ADOPT THE ENGLISH RULE OF  
CITIZENSHIP BY BIRTH ?

In the declaration of independence it is clearly set forth: "That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Substantially the same phraseology is found in the declaration of rights and bills of rights of the various states which compose the United States.

There can be no mistake in the spirit of these declarations.

The declaration of independence contains a series of grievances for which redress had been sought from the English king and which had not been obtained.

The primary purpose was to combat the source of law and government, under which they had lived, and is explained by the words: "Governments are instituted among men, deriving their just powers from the consent of the governed."

They had lived under the rule that the king could do no wrong, and was the source from which emanated all law and justice, flowing in pure streams to all the relations of life into which man enters.

It was under this rule, by which the laws of England were interpreted. With such an interpretation, no redress could be given to the wrongs complained of by the colonists. Whatever law was enacted was enacted for their good and was promulgated by a sovereign who could do no wrong.

The sovereign had done no wrong to the colonists in America; there was nothing to be redressed; their petitioners were refused a hearing; their petitions were not heeded.

The English principles were structural in their form of government. As Sir Vernon Harcourt expresses it: "The rule of determining nationality in England was purely of feudal origin." They made up the expressed form of government as it confronted the outside world. They were the bulwarks of what was declared by the English sovereign to be, the rights and privileges of his subjects. They were in

no sense conventional in their nature, as between subject and sovereign. There was no provision of law by which the English subject could convene with his king. Suffrage was not free. A subject did not enjoy the right to represent and be represented *suo nomine*. Contrast this relation with the conventional form of government as declared in the United States, in which every member entitled to full rights of citizenship partakes ; in which every such a member is an acting ingredient, and partakes of the whole, and the difference is manifest.

In support of the adoption by the citizens of the United States of the feudal principles, two arguments have been adduced, both in direct antagonism to the declaration of independence and the constitution.

The first is formed in the theory that the government, as agreed by the colonists for the United States, was a substitute for the English sovereign. Consequently, intentional or accidental birth on an inanimate piece of ground in the United States created an immutable relation through it, to the government, to which was owed an indelible allegiance. This argument proceeds on the same fiction from which the English system is reasoned.

Was this the intent and purpose of the compact entered into by the American colonists in the creation of their government? By no means. It was a government created by men who were equal ; who possessed certain inalienable rights ; and in the enjoyment of these rights they organized a government of themselves, by themselves and from themselves. Each and every member of the society had the right and

privilege of participating in the legislative branch of the government, and was subject, with aliens, to the executive and judiciary. The reverse was the rule in England.

The second argument is found in opinions of judicial tribunals when invited to consider the question whether or not the theory of immutable allegiance, as known to the English law, was adopted by the United States.

The decisions announced in *Inglis vs. The Trustees of the Sailors' Snug Harbor*; and *Shanks vs. Dupont*, in 3 Peters' Reports, are summed up by Chancellor Kent, with his own opinion, as follows: "From this historical review of the principal decisions in the Federal courts, on this interesting subject of American jurisprudence, the better opinion would seem to be, that a citizen cannot renounce his allegiance to the United States without the permission of government to be declared by law; and that, as there is no existing regulation in the case, the rule of the English common law remains unaltered." 2 Kent, 49; other authorities: 3 Story on the Constitution, 3; Lawrence's Wheaton, 995 (Ed. 1863).

It would seem that we should accept this as the result of the leading judicial opinions in the courts. It was in direct conflict with the opinions of the other departments of the government and the naturalization laws of the United States. 2 Kent, 49, note.

The fallacy of the opinions of the courts lies in a mistaken source of government, omitting entirely the fact that certain inalienable rights are in man, which he did not surrender by the compact which he made

with his fellow man, when he organized the society of the United States.

The opinions fall in with the line of argument adduced to support the fiction that the United States was a substitute for the British sovereign.

The opinions rest on the necessity of a positive regulation of law by which allegiance could be absolved.

May it not be inquired why was not a positive regulation of law as much requisite for the adoption of the principles of *jus soli* and allegiance, as, according to Chancellor Kent, it was requisite, in order that a citizen of the United States might throw off his allegiance? There is no positive regulation in the original compact, constitution or statutes, adopting these principles as known to the English law. "The English common law is not to be taken in all respects to be that of America. Our ancestors brought with them and claimed as their birth right, its general principles and adopted that portion of it only which was applicable to their situation."

Dictum in 8 Peters' Reports, 658: "It is clear there can be no common law of the United States. When, therefore, a common law right is asserted, we must look to the state in which the controversy originated."

Dictum, 1 Blackford, 205: "The common law of England is not in the United States, as a federal government."

There is no rule of law in the United States, by which it is laid down that the form, structure and organization of the government of the United States

is to be interpreted by the principles of the common law of England. That portion of the common law which related to the form of government of England was expressly set at defiance in the declaration of independence.

The principles of the government were founded in pure reason which was the immutable, eternal and universal law of mankind. On this same rule are founded the principles of international law which govern the intercourse between independent societies and involved in the question of intercourse is that of expatriation. "Our knowledge of international law is not taken from the municipal code of England, but from actual reason and justice, and from writers of known wisdom, and they are all opposed to the doctrine of perpetual allegiance." 9 Op. Atty-Genl. 356.

No better exponent of this famous document (the declaration of independence) can be found than the man himself who agitated the question of separation and drafted the declaration. None could know better than did he, the spirit and intent of the convention by which it was adopted. Mr. Thomas Jefferson, in discussing, among other things, the question of allegiance, while admitting the term, impliedly states: "That our citizens are certainly free to divest themselves of that character, by emigration and other acts manifesting their intention and may then become the subjects of another power and be free to do whatever the subjects of that power do."

Certainly this should be sufficient to counteract any force of judicial tribunals, when arguing from false premises.

Herein is concisely combatted the theory that a specific regulation of law was essential to a change of citizenship.

In article 7 of the constitution, by which a uniform law of naturalization is declared essential, in lieu of the laws of the different states then existing, is evidence positive of right to acquire citizenship in the United States and implied evidence, that the same privilege exists to dissolve it, on the principle declared, that all men are created equal, and in recognition of the natural rights of man.

It would be difficult to reason from the American standpoint of affairs, at the time of the adoption of the constitution of the United States, and prior to that date during the agitation of the question of separation, how any other conclusion can be reached. When argued from the English standpoint, as was done by Lord Grenville in 1797, the conclusion is as follows: "No British subject can, by such form of renunciation as that which is prescribed in the American law of naturalization, divest himself of his allegiance to his sovereign. Such a declaration of renunciation made by any of the king's subjects, would, instead of operating as a protection to them, be considered an act entirely criminal on their part." Lord Grenville was, at this time, commenting on a relation with the United States; the same rule would be applicable to other countries.

Substitute, however, in place of British subject, American citizen, and in place of his reference to the United States the same reference to all countries, and the opinion of some of the tribunals of the United



States are substantially in confirmation of Lord Grenville's dictum.

Chief Justice Marshall, in *Murray vs. Schooner Charming Betsy*, 2 Cranch, decided as follows: "The American citizen who goes into a foreign country, although he owes but a temporary and local allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of his own government; but his situation is completely changed when by his own act he has made himself subject to a foreign power."

Thus it appears that the authorities were in conflict not alone in the highest tribunal of the land, but also in the lower state courts, which a review of their decisions would show.

This rule was laid down at an early date in the state of Massachusetts, as follows: "This claim of the commonwealth to the allegiance of all persons born within its territory may subject some persons, who, adhering to their former sovereign, and residing within his dominions, are recognized by him as his subjects, to great inconvenience, especially in time of war, when the opposing sovereigns claim their allegiance. But the inconvenience cannot alter the law of the land. Their situation is not different in law, whatever may be their equitable claims, from the situation of these citizens of the commonwealth who may be naturalized in the dominion of a foreign prince. The duties of these persons arising from their allegiance to the country of their birth, remain unchanged and unimpaired by their foreign naturalization. For by the common law no subject can expatriate himself." *Ainslie vs. Martin*, 6 Mass. Rpts.

The contrary was submitted at the same time in Virginia. "It is believed that the right of emigration or expatriation is one of those inherent rights, of which, when men enter into a state of society, they cannot by any compact deprive or divest their posterity. But although municipal laws cannot take away or destroy this right they may regulate the manner and prescribe the evidence of its exercise, and in the absence of the regulations *juris positivi*, the right must be exercised according to the principles of law." *Murray vs. McCarthy*, 2 Mumford's Repts.

By what processes of reasoning these two opinions so diametrically opposed were reached is to be explained by this: that in the first, the common law was believed to be the guide to the declaration of independence and the constitution of the United States, while in the second the reason is from the principles as laid down by the founders of the government and based on the natural laws of man.

In the first, it is denied that the government of the United States is conventional as between man and man. In the second, it is admitted that the government has no other existence than in compact entered into, by and between those who organized it. Yet with this diversity of opinion, it was still, in 1836, an open question with our judiciary. Under the rules then prevailing the right to depart was both acknowledged and denied. The first recognized the English common law as the guide to the American form of government, while the second recognized the government to be founded on the natural law of man. The latter is the only and correct view. It is based on the compact in

which the government had its origin. The application of the principles of the English common law was fallacious.

WERE THE PRINCIPLES OF *JUS SOLI* AND ALLEGIANCE ADOPTED IN THE UNITED STATES PRIOR TO 1836 OTHER THAN IN NAME?

It is proper, first, to inquire if adopted to whom were they applicable? The founders of the government became citizens by recognition under the treaties of 1783 and 1794. At this time citizenship in the United States was not acquired in any other manner. Those born in the colonies were English subjects by birth. The fact of birth in the colonies did not in anywise affect their right to recognition and to option under the treaties of 1783 and 1794. Those who were born in England proper stood equal with those born in the colonies. It was no advantage nor was it a disadvantage to have been born within or without the United States so far as the effect of the treaties was concerned. All who wished to become citizens exercised the right of choice or option and became citizens of the United States, or remained English subjects as they wished.

To these who optated to become citizens were born children; these children were born within and without the limits of the United States. First. As to those who were born within the United States.

There was no positive regulation, by which it was specifically declared in what manner or for what reason they acquired citizenship. There was no positive regulation by which the principles of the declaration of independence and the constitution should be inter-

puted, other than by the spirit which these compacts carried within themselves.

There was no positive regulation that these compacts should be interpreted by the rule of the English common law. Only as much of this law was adopted as was applicable to the situation of the founders of the government, in their civic relations and principles which governed crimes. These compacts carry within themselves a sufficient refutation of the common law rules, so far as they pertain to the structure and form of government in England. Among these primarily were the principles of *jus soli* and allegiance.

Neither *jus soli* nor allegiance are mentioned in name in these original compacts so as to convey at all the idea and meaning which was given to them in England. They are taken up in name by the different departments of government — by the publicists and by the judicial tribunals.

In the foregoing they were in dispute as to their acceptance and the reasons are given. The conclusion reached was, that they were not adopted; they were incompatible with the structure of government, as agreed to by the colonists.

The argument must proceed upon the theory which was and became the practice, that those who joined the compact, might on general principles and by the laws of nature, dissolve connection with it. The right was implied if not expressed. Nor was it expressed, in the compact of government, by what means or in what manner the children of those who were citizens should become citizens.

If the structural principles of the English govern-

ment were not adopted; if no positive regulation prevailed in the United States by which the children of citizens of the United States became citizens, it is pertinent to inquire, how was a citizenship acquired by them?

According to the theory of Chancellor Kent a positive regulation was required by which citizenship in the United States could be acquired. No doubt, by this line of reasoning, a positive regulation would be requisite, in the acquisition of citizenship by children of citizens of the United States born within the limits of the United States. Disregarding the structural principles of the government of the United States and the inherent rights of man, he formed a rule among the structural principles of the English government as declared in the feudal relations through the *jus soli* and allegiance.

According to the opposing theory, which denies the structural principles of the English government and acknowledges none but those of the United States, on matters pertaining to the form of government, the rule must be implied in want of a positive rule expressed.

It has been already adverted to, that the parties to the original compact, by which the government of the United States was formed, were citizens not by birth under the principles either of *jus soli* or allegiance, but by choice and by the treaties. This was the exercise of a right, primary in men, which had already been exercised in 1776 by the colonists prior to the recognition of the right, in another form, by the treaty of 1783. Under either act, the one of 1776, 1783 or

1795 the effect was the same and was the result of the exercise of a right natural in man.

It has already been mentioned that no positive regulation prevailed, by which children of citizens of the United States born in the United States became citizens; that the structural principles of the English government were not adopted in the United States, either by express words or by implication; that the natural rights of man are recognized in the compact of government as agreed upon for the United States and disavowed by the feudal principles on which is constructed the English government.

Correlative to the rights inherent in man are the duties of man. Primary among these duties growing out of the relation of parent to child, is the one of support which custom and law throughout the civilized world has enjoined on the parent.

Correlative with the duty of the parent to support the child is the claim of the child on the parent for support.

These have been positive rules of society. They are the rules of nature transposed into laws for the regulation of these relations in society. These laws were natural to the founders of the government of the United States. They brought them in positive form from England and nourished them as colonists. They were portions of the common law of England as well as of the natural law of man, and were adopted for the society of the United States.

According to the law of nature, no place is circumscribed within which the parent shall support the child. Wherever the parent goes the child follows.

Nor is the place circumscribed by the declaration of independence or the constitution of the United States. Nor is it by the law of any civilized community. The right of locomotion is not restrained by civilized governments.

Out of this relation of parent to child and child to parent, grow love and affection, aside from duty of support which devolves on the parent toward the child. By the positive law of all societies, a certain age is fixed and determined at which membership is permissible and at which the exercise of full rights of citizenship is allowed.

While the child is under this prescribed age, which varies in different societies, he is of the same citizenship as is the father, by virtue of the father's citizenship.

The relation between parent and child is complex; their rights, the one to the other, are inseparable; they are so considered by the positive law and by custom. Their inseparable nature renders the rule necessary, that the child follows the citizenship of the parent, until he reaches the age at which he may elect to remain of the same citizenship as the parent or abandon the parent's citizenship. This is the rule which naturally and of necessity governed in the United States prior to 1836, and by which those children of citizens of the United States became citizens.

When they arrived at the age prescribed, at which they could enjoy full citizenship, they acquired full citizenship, by taking part in the right of being represented and of representation in the legislative branch of government, expressly or impliedly.

In the United States, this privilege of election is

more marked than in most other countries. When the child fails to elect, the presumption is immediately raised, that he has so done, in want of expression by him to the contrary, by seeking citizenship in some other country. It cannot be denied, however, in this connection that the term "native born" was and is in use; its application was not and is not with the same reason therefore, as is found in the English common law. Its use was and is, purely in imitation as a term, of the same term, in the English law. Strictly interpreted its meaning was and is, *partus sequuntur patrem*, i. e., the child follows the citizenship of the parent.

The rule was well laid down by Vattel, sections 216-220: "By the law of nature alone children follow the condition of their fathers and enter into all their rights. The place of birth produces no change in this particular; for it is not naturally the place of birth that gives rights but extraction."

Secondly, as to those children born of citizens of the United States, without the limits of the United States.

There was no prohibition on citizens of the United States sojourning in foreign countries. If while abroad children were born to them, such children followed the citizenship of the parent. This rule is the primary, positive regulation on this branch of this subject.

By the act 1802, "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth, citizens thereof, are declared to be citizens of the United States, but the rights of citizenship shall not descend to children whose fathers never resided in the United States."



This rule is similar to the English rule of 7 Anne, chapter 5, section 3. The success in the enforcement of this rule by England has already been referred to, and from that practice the conclusion would be that English children born abroad of English subjects may have the rights of Englishmen when within Great Britain, but when abroad in the country of their birth they failed to receive that protection, which an English subject born of English parents in Great Britain would receive.

It is reasonable to infer that the practice of the United States under this same rule was not any more successful.

For example, what would be the citizenship under the English rule, of a child of citizens of the United States born in England? While that child would be held as an English subject in England under the English law, in the United States, he would be held to be a citizen of the United States. Thus, in both countries he would be subject to duties as a citizen of each, when, respectively, in the one or the other. The rule, as applied in the United States under the act of 1802, was structural as to the form of government in the United States. It was expressive of the governing principles as to citizenship that the child followed the citizenship of the parent. To declare that the child born in the United States, of citizens of the United States, was other than a citizen by descent, and became a citizen because of the citizenship of the parent, would be to contradict the rule which was laid down for children of citizens of the United States born in foreign countries.

To follow the English common law rule would be to contradict the act of 1802, in spirit and intent. The English common law rule was not adopted.

Reverse the rule, and what was the citizenship of the children of aliens born in the United States? There is no positive rule, by which, at this time, they were declared to be citizens of the United States. While it could properly be held that they owed a temporary and local allegiance to the government of the United States, as it was held that their parents did owe it, in *Carlisle vs. United States*, 16 Wallace, 148; yet upon return to the country of their parents, in which either the rule as found, 7 Anne, chapter 5, section 3; or the rule that children followed the citizenship of the parent until majority prevailed, they would in either case be held to be citizens of the country of their parents' citizenship.

The principle would fall short of the definition of citizenship. One cannot enjoy the citizenship of one country when in that country, and the citizenship of another country when in that country.

The rule, as laid down by the act of 1802, did not carry with it the principle of allegiance as did the rule in 7 Anne, chapter 5, section 3. This principle carried within it a perpetual personal relation to the English sovereign, which by analogy could not have been intended in the relation of a citizen of the United States to his government. Were it so considered, it would argue in favor of the theory that the government of the United States was a substitute for the English sovereign. There was no such relation purposed, nor is any thing contained in the principles of

the government of the United States that such a substitution should be made. If by simple phraseology the term "allegiance" is used in the jurisprudence of the United States, it is not with the import as used in the jurisprudence of Great Britain. For in England this allegiance was indissoluble and perpetual, which rule had not maintained in the United States.

Alexander McLeod defined the position of the United States on allegiance in 1815 to be: "There is no obligation from the social compact upon man to continue in allegiance to the government under which he was born." Again, Mr. Caleb Cushing in 8 Op. Atty-Genls. 139: "The doctrine of absolute and perpetual allegiance is inadmissible in the United States. It was a matter involved in and settled by us by the revolution, which founded the American union."

#### WHO WERE CITIZENS OF THE UNITED STATES IN 1836 ?

The citizens of the United States, at this period, were the children of such former English subjects as had opted to become citizens, and such foreigners as had become legally naturalized. This latter class will be considered when the questions of expatriation and naturalization are discussed. It is the purpose at the present time to discuss only the former class, those who had become citizens under the rule, *partus sequuntur patrem*.

The first generation descended from the founders of the government and born in the United States were now in full age, enjoying full rights and privileges of citizenship, as the children of parents who were citizens by choice under the treaty of 1783. The second

generation were born, and by virtue of birth of citizens of the United States, were following the citizenship of their parents under the rule of extraction.

When the first generation became of age each person so descended of a citizen of the United States, expressly or impliedly, himself became a citizen of the United States, or emigrated and became a citizen elsewhere.

The terms "expressly" or "impliedly" are here used as demonstrative of the peculiarity which attends a government founded on compact as was the government of the United States. The alternative is open to the child of a citizen of the United States. He either remains or departs; he may remain and depart later in life. This is always a matter of choice with him. Here we have to do with him upon reaching his majority and the same rule applies, regardless of the manner in which the parent became a citizen, provided he acquired his citizenship legally under the statutes of the United States.

Upon reaching majority, if the child desires to exercise full rights of citizenship, he proceeds to partake of the representation privileges, which is done pursuant to prescribed regulations pertaining to suffrage.

Hereby, he becomes, by subscribing to the principles of government, expressly, as proclaimed by its founders, a contracting party to the original compact, by which the government was organized. It is in this manner that the contract is constantly in process of renewal as between the citizens of the United States.

If it does not partake of the representation privileges, by seeking the rights of suffrage in the absence of with-

drawal, he subscribes impliedly to the principles of government and becomes a contracting party, equally as well as if he did so expressly pursuant to the same principle.

As before stated, the first generation was at this time, in the enjoyment of the rights and privileges of citizens, as declared in the principles of government set forth in the original compact on which the government was founded. It had renewed and re-affirmed the principles of the government and by expressed or implied acts demonstrated the necessity of a recognition of the natural rights of man and that government was in man, of man and by man.

The rule is laid down in *Shanks vs. Dupont*, 3 Peters, 242: "Children born in a country, continuing while under age in family of father partake of his character as a citizen of that country." The governing principle is that the government is founded on contract. During minority a child of a citizen of the United States wheresoever born cannot become a contracting party. He can do this only when he reaches majority. He then elects by implication or expressly to become a citizen of the United States by joining with citizens of the United States in the exercise of rights of citizenship. This he does by virtue of his father's rights as a citizen. Or he may depart and seek allegiance in another state. Upon reaching majority, he does or does not renew the original contract of government as made by the founders of the government. He does or does not become a party thereto.

THE RIGHT OF OPTION FURTHER RECOGNIZED BY THE  
UNITED STATES.

By the treaty of 1803 with France, by which the colony of Louisiana was ceded to the United States, it was distinctly understood that the right of option prevailed, to depart or remain as French citizens or to choose to become citizens of the United States.

The same rule was recognized in 1819 in the treaty with Spain, by which East and West Florida were ceded to the United States.

By these cessions these foreign powers surrendered their claims to territory which now forms a great part of the United States. A Christian duty devolved on these countries not to leave their subjects defenseless, and the following was contained in each treaty:

"The inhabitants of the territories ceded shall be incorporated in the union of the United States as soon as may be consistent with the principles of the federal constitution, and admitted to the enjoyment of all the privileges, rights and immunities of citizens of the United States."

DID CITIZENSHIP BY DESCENT AND NOT BY BIRTH UNDER  
THE ENGLISH RULE, CONTINUE TO BE THE RULE IN THE  
UNITED STATES TO 1868 ?

During the period from 1836 to 1861 the question was less discussed than it had been prior to that date.

The supreme court of the United States refrained from expressing and defining its position on the subject. The courts of several states expressed opinions.

The court of appeals of Kentucky in 1839 upheld the implied right, as existing in the parties contracting,

to withdraw from the United States, that the right was fundamental and could be exercised at the option of its citizens.

This opinion was grounded on the constitution of 1792, "That emigration from the state shall not be prohibited."

This declaration is from the Virginia constitution, in which the right is recognized. The contrary view was held by the supreme court of Pennsylvania, notwithstanding the constitution of that state as adopted in 1776: "That all men have a natural, inherent right to emigrate from one state to another that will receive them."

In other states opinions were expressed, but in nearly every case the reason proceeded either upon the local declaration of rights or the local constitution, and were only of special force in the state, in deciding a local issue.

The publicists of the United States discussed the question from the standpoint of international law as recognized by and between different countries.

Mr. Marcy wrote to Mr. Halseman in 1852: "There is great diversity and much confusion of opinion as to the nature and obligations of allegiance. The sounder and more prevalent doctrine, however, is that a citizen or a subject having faithfully performed the past and present duties, resulting from his relation to his sovereign power, may at any time release himself from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the finest prospects of happiness for himself and posterity."

Mr. Cass was of opinion in 1859: "The right of expatriation cannot, at this day, be denied or doubted in the United States. The idea has been repudiated ever since the origin of our government that a man is bound to remain forever in the country of his birth and that he has no right to exercise his free will and consult his own happiness by selecting a new home. The most eminent writers on public law recognize the right of expatriation. This can only be contested by those who, in the nineteenth century, are still devoted to the ancient feudal law with all its oppression. The doctrine of perpetual allegiance is a relic of barbarism which has been gradually disappearing from Christendom during the last century."

Caleb Cushing expressed the view very forcibly that a citizen of the United States may exercise the right of expatriation — the right not being expressed, is implied. He goes further, and adds: "The doctrine of absolute and perpetual allegiance is inadmissible in the United States. It was a matter involved in and settled by, the revolution which founded the American union." 8 Op. Atty-Genl., p. 140.

Jeremiah Black recognizes the right to be a natural right which every free man may exercise and is incontestable. 9 Op. Atty-Genl., p. 356, *Santissima Trinidad*, 7 Wheat. 283.

This treatment of the question of the right of a citizen to depart from the United States, and the rule as established by the different writers, necessarily involves the correlative relation of acquisition of citizenship. If citizenship was acquired by birth under the English rule, these publicists would not assume the position



which they have done and which they have announced as the foreign policy of the United States.

To repeat what has already been set forth as the rule prior to 1836, it must be affirmed that neither *jus soli* nor allegiance in the English sense and meaning had any thing whatever to do with the acquisition of citizenship in the United States.

In England these rules went to the form of government. In the United States the government was organized on principles of contract as between men, in direct antagonism to the English form of government.

The use of the term "allegiance" has no technical place in the jurisprudence of the United States in its feudal meaning.

Technically it should be said that the citizen has taken an oath to support the constitution and the laws of the United States. This is done by every citizen, either expressly or impliedly, before he enjoys full rights of citizenship.

In taking the oath, no personal relation is entered into with the government of the United States. It is a relation which is created by a citizen with his fellow citizens. By it he affirms and agrees to the continuation of the contract on which his government is founded. It is an expression of truthful intent to abide by and obey the laws which the citizens enact for themselves, from among themselves.

#### THE RULE LAID DOWN IN 1868.

"All persons born in the United States and not subject to any foreign power are declared to be citizens of the United States."

For the reasons already given, the common law rule, as known in England, was not adopted by the United States, in its application to citizens.

The right of expatriation as being a natural and inherent right in man, has been advanced by the publicists in the United States ever since the inception of its government. The advocacy of this principle was clearly in contradiction of the common law principle which governed in England. Had the common law principle as recognized in England been adopted in the United States, the right of expatriation on the part of a citizen of the United States could not have been advocated by the publicists. The exercise of such a right, as it was maintained to exist in a citizen of the United States, bore within it a refutation of the adoption of the English common law rule.

If for reason of locality of birth, citizenship was acquired, as it was understood in England, the right of expatriation could not have existed ; and the fact that it was held to exist, and was exercised by citizens of the United States, would seem to deny the adoption of the English rule.

It has never been maintained, even by the most ardent advocates of the English rule in the United States, that the rule was adopted in the United States, only in part. These advocates have maintained, if adopted at all, that it was adopted as a whole. If adopted as a whole, in what manner do they reconcile the exercise of the right of expatriation, on the part of citizens of the United States, with the ties of allegiance, by which a child of an Englishman, born of English parents in England, was bound to his sovereign ?

If a child born of citizens of the United States, in the United States, bore to the United States the same relation which a child of English parents, born in England, bore to England's sovereign, then how was the right of a citizen of the United States to expatriate himself to be reconciled? This contradiction in the practice, as exercised by citizens of the United States, refuted the application of the rule as known in England, in the United States.

For a publicist in the United States to have upheld the English rule as a whole, would have been to deny the fundamental principles of his government. It must be conceded that the right of expatriation did exist in the United States, and has been exercised by citizens of the United States since the foundation of the government. It must be admitted that the principles involving the right of expatriation were incompatible with the English rule.

It would be difficult to reconcile this incompatibility. The practice admits its existence, which the English practice does not admit. By the English practice it has been shown that while the right to depart and absolve allegiance from the English crown did not exist in law, yet in many cases, where Englishmen were temporarily or permanently residing abroad, they did owe a temporary and local allegiance to the government under which they were living; more than this, in many cases they were called upon and did perform similar duties to the government under which they were living as did the citizens of that government perform when called upon by their government so to do. And the English government did not deny

but that they should perform such services, and in every respect be treated as citizens of that country; yet upon return to England they were held to have lost none of their rights as Englishmen. The fallacy of this practice lies in the theory of a dual citizenship.

This duty to serve the country in which Englishmen sojourned abroad, was no greater than if they had renounced their English citizenship and become citizens of that country. In effect it was the same as if they had expatriated themselves.

It is not found that the United States sanctioned this practice. It allowed its citizens to expatriate themselves and become citizens of another country. It did not recognize the principle of dual citizenship as was done by England.

In order to understand the rule laid down in 1868, kindred legislation should be considered in connection with it. Any ambiguity should be avoided, and while the rule laid down in *United States vs. Fisher*, 2 Cranch, 258, which holds that in case of ambiguity, every part of the act is to be considered, and the intent is to be gathered from the whole, we are at liberty in order to ascertain the spirit of the legislation to consider other acts which bear upon the same question.

We must at the same time consider the purpose for which the legislation was passed.

It cannot be argued, in this connection, that it was the purpose to pass statutes merely as municipal rules which should have no extra-territorial effect, when the statutes relating to citizenship were passed. It must be presumed that it was the intent to conform to the

laws of nations as practised in the civilized world, in the relations of civilized states the one toward the other.

For this reason the statute of 1802 should be construed in this connection. By this statute it was enacted: "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth, citizens thereof, are declared to be citizens of the United States."

Under the rule laid down in 1802, it is evident that the locality of birth should not govern as to children of citizens of the United States born in foreign countries. And yet it is nowhere denied but that such a child so born in a foreign country could, on reaching majority become a citizen of that country. This the English rule denied and maintained up to the year 1870, the rule: "Once an Englishman always an Englishman." By this practice on the part of the United States the adoption of the English common law rule is again denied.

It must be admitted, however, in this connection, that persons subject to a foreign power born in the United States, had been held by the authorities to be citizens of the United States. Two rules were laid down; the one in 1859 in 9 Op. Atty.-Genls. 373: "A free white person born in this country of foreign parents is a citizen of the United States." The other, laid down in 1862 in 10 Op. Atty.-Genls. 328: "A child born in the United States of alien parents who have never been naturalized is, by the fact of birth, a native born citizen of the United States, and entitled to all the rights and privileges of citizenship."

These rules were applicable to the territory of the United States, and had no ex-territorial effect. It is admitted by the rules that the parents were aliens, and as such were citizens of another country. Suppose that the country of which the alien parents were citizens had the same rule in its jurisprudence as is laid down to be the rule by the United States in the act of 1802. Or, reverse these two rules and admit that these rules governed in the country of which these alien parents were citizens ; and apply them to children of citizens of the United States born in that country. Does this not show a contradiction in principle which is untenable in the jurisprudence of the United States ?

Not this alone. These rules are for municipal guidance in derogation of the principles of international law. It is not simply the rights and privileges of citizenship in the United States which govern ; to it there is to be added a further element in order to constitute perfect citizenship and that is, equal protection abroad. Under these rules the United States have simply decided that the children of aliens born in the United States can enjoy rights and privileges within the United States. The United States could not contend that these rules clothe such children with the rights of protection as citizens of the United States upon return with their alien parents to the country of which they were citizens. Apply these rules to a child born of English parents ; would the United States extend to such children, protection as citizens of the United States upon return of those children with their alien English parents to England, where the rule " Once an Englishman always an Englishman " governs and

where the principle of allegiance to the sovereign is held to be indelible and indissoluble?

The fallacy of these rules in their application within the spirit of international law, is demonstrated by the act of 1868. By that act, the United States does not lay claim to the children of aliens, subjects of a foreign power. By this portion of the act, relating to children of aliens subjects of a foreign power, and born in the United States, and by the act of 1802, the principle of citizenship for reason of locality of birth is distinctly denied.

There still remains the other portion of the act: "All persons born in the United States are declared to be citizens of the United States."

With the exception of the fourteenth amendment to the constitution, which was held to be one of a series of provisions having a common purpose, namely: to secure to the negroes all the civil rights that the superior race enjoys, as decided in *Strander vs. West Virginia*, 100 U. S. 303; and *Neal v. Delaware*, 103 U. S. 370; there are no other acts than the one of 1802 and the one of 1868, which refer to the acquisition of citizenship, whether for reason of locality of birth or for reason of descent or extraction.

We are, therefore, confined to these acts, which must be construed as a whole. They must be construed with a view to the existing principles of international law on this question. To reach the law of construction, we must refer to the practice of civilized states, because we are dealing with a question which concerns citizenship, the very definition of which necessitates a consideration of the rules which govern citizenship in the international practice.

THE RULE OF INTERPRETATION TO BE APPLIED TO THE  
STATUTES.

“We take our knowledge of international law not from the municipal code of England, but from natural reason and justice, from writers of known wisdom, and the practice of civilized nations.” 2 Op. Atty.-Genls. 356.

There are, therefore, three ways by which to reach the rule of construction which must be applied to the acts of 1802 and 1868, considered as a whole.

First, from natural reason and justice. It is distinctly stated that we do not derive our principles of international law from the municipal code of England. While it is too well known that the English common law rule did obtain for the guidance of England throughout centuries of time, the royal commission appointed by her majesty in 1868 to inquire into the question of allegiance, which commission was composed of prominent international jurists, such as Sir Robert Phillimore, Montague Bernard and Travers Twiss, together with the leading jurists and statesmen of England, which commission did find: “We are of opinion that the rule of the common law is neither reasonable nor convenient. It is at variance with those principles on which the rights and duties of a subject should be deemed to rest; it conflicts with that freedom of action which is now recognized as most conducive to the general good, as well as to individual happiness and prosperity, and it is especially inconsistent with the practice of a state which allows to its subjects absolute freedom of emigration.”

This material change in the advocacy of the com-



mon law rule is important in this connection. It proceeds upon natural reason and justice; it is applicable to a consideration of the acts of 1802 and 1868. The happiness and prosperity of the individual inures to the general good of mankind, whether the individual is at home or abroad. Any restriction for reason of locality of birth is an injury to the general good of mankind. Such freedom of action is essential at the present stage of civilization, as will conduce to the good of mankind. Justice demands that a citizen should enjoy the right of expatriation. This was a right reserved by man when he entered society. This was a dictate of natural reason, and, therefore, he should be sustained in the exercise of the right, for the good of himself and of his children, provided he exercises the right consistent with justice and fair dealing to others.

Sir Vernon Harcourt decided: "That the rule of determining nationality in England was of purely feudal origin." In the United States it has never been held that the principle of feudalism was founded in natural reason and justice. On the contrary, the principles set forth in the declaration of independence are in distinct antagonism to the principles of feudalism.

Second, from writers of known wisdom. The publicists have discussed this question from the two different standpoints. The English writers have maintained that the English common law rule, which was conceived in feudalism, should govern. At the various epochs when these writers have discussed the question, England sought morally, if not actually, to govern the civilized world. In each instance, these writers have reasoned from Calvin's case as decided by Lord

Coke. They have labored to make the English common law, or properly speaking the municipal law of England, the international common law of nations. With them these questions were argued and decided in accordance with the decisions of the English tribunals, and from these decisions, they derived their knowledge and promulgated to the world, simply the municipal rules which governed Englishmen in England. In their arguments they confine themselves to the opinions of their own local judges as the source from which the international law of nations should flow. They did not argue from the standpoint that man had within him inherent and inalienable rights which were a part of his nature. To them, reasoning from this standpoint was fallacious. Was it not equally as fallacious to maintain that the municipal law of England alone contained the principles which should govern in the relations between nations? In this connection it might, with all respect, be said, that the so-called English publicists were expounders of the English common law.

The continental writers have, as a rule, maintained the principle of citizenship by descent and not by locality of birth, which latter was the English common law rule.

Vattel directly antagonizes the English rule when he writes: "The true bonds which connect the child with the body politic is not the matter of an inanimate piece of land but the moral relations of his parentage." Again he adds: "The place of birth produces no change in the rule that children follow the condition of their fathers, for it is not naturally the place of birth that gives rights, but extraction."

Foelix did not differ from Vattel; he lays down the practice to be: "That, the child is a part of the nation to which his father belongs, if the child is born in lawful wedlock, or to the nation of its mother, if the mother is not married."

Von Bar, a German publicist, explains the general rule to be as follows: "To what nation a person belongs is by the law of all nations closely dependent on descent; it is almost an universal rule that the citizenship of the parent determined it; that of the father, where the children are lawful, and where they are bastards, that of the mother, without regard to the place of their birth. And that must necessarily be recognized as the correct canon, since nationality in its essence is dependent on descent."

Westlake takes the broad position that: "Legitimate children, in whatever region or place they may be born, are regularly members of the state of which their parents form part, at the moment of their birth." This rule does not determine that locality of birth governs, for it carries within itself the principle of natural right of a citizen of one state to change to another. Herein Westlake differs from many other English writers and advocates impliedly, at least, the principle of citizenship by extraction and the right of expatriation, both of which contradict the English common law rule which governed in England prior to the year 1870.

Field, in his International Code, lays down the rule to be that: "A legitimate child wherever born is a member of the nation of which its father at the time of its birth was a member."

Both Heffter and Bluntschli, recent German writers, maintain the same position.

Fiore, a recent Italian writer, subscribes to the general view taken by continental writers and maintains the correctness of the principle.

Ferguson, who recently wrote as a Holland publicist, touches the question in a very apt manner; particularly so, for this discussion. For it is not citizenship in a limited sense as defined by a municipal code, with which we are dealing, but with a citizenship as recognized by the principles of international common law. Ferguson remarks: "The nationality which constitutes an object of international law is the political nationality or political citizenship which can be lost and acquired through acts of legislation. Political nationality is acquired, first, by birth; that is, from the nationality of the parents, not from the mere accidental place of birth; second, by law, called naturalization."

Third: From the practice of civilized nations.'

The rule, locality of birth, governed to a great extent prior to the publication of the code of Napoleon. The influence of this production was great throughout continental Europe. It was the death blow to the feudal principle which governed in the common law, the abolishment of which was speedily effected by codifications of the laws in the different countries, based on the principles enunciated in the French code. The purpose and intent was to abrogate the existing common law and in its place to put in force principles consistent with man's nature. Its object was to eradicate as far as practicable the vestiges

of the feudal system. The fundamental idea was to effect a complete change in the principles of jurisprudence in every respect, in which it could be done without injury to already existing acquired rights. The proclamation was: "The new law abrogating the ancient law being reputed to be more useful and beneficial to the people than the law which it abrogates, it becomes necessary for this reason to give to it the most extended effect."

By the law of France, prior to the revolution, a child born on French soil, though born of foreign parents, was a Frenchman, *jure soli*; born of French parents abroad, the child was French *jure sanguinis*. "The framers of the Code Napoleon adopted a sounder principle; excluded the place of birth as the source of nationality itself." Cockburn on Nationality, page 14.

"The sounder principle," adopted by the French code, was the principle that citizenship was acquired by descent or extraction. Code Civile, art. 10.

This rule governed both for children of Frenchmen born in France, and in foreign countries. The principle is carried still further: "The children of a Frenchman, naturalized in a foreign country and who are born in the same country, are aliens." Thus in each case, a child born of French parents in France; a child born of French parents in a foreign country; a child born of a former Frenchman who has become naturalized in a foreign country, the child respectively follows the citizenship of the father.

In the empire of Austria, the claim to the citizenship of the father, at the time of the birth of the child, is recognized as the right of the child.

In Prussia, a child born of a subject of the kingdom, is for reason of birth of a Prussian subject, a citizen of Prussia, whether born within the territory of Prussia or in a foreign country. The law is substantially the same in most of the other German states.

The rule in Sweden and Norway is : the status of persons born of Swedish or Norwegian parents is derived from their parentage.

The same rule prevails in the republic of Switzerland.

In Denmark, Holland and Portugal, the principle recognized is, that the claim to citizenship is by descent. In these countries, however, for the benefit of children of aliens, born within their limits, citizenship is conferred upon them for reason of birth within the country, without their claiming it, provided, they desire, upon attaining their majority, to waive their rights to citizenship by descent. This rule, which is made one of convenience for children of foreigners born within the country, by which they may claim citizenship in the country from fact of locality of birth, thus saving any naturalization, recognizes the law in foreign countries to be, that citizenship is acquired by descent.

The rule which governs in Italy is : that citizenship is acquired by descent. There is a further rule that if an alien has resided in the country for a period of ten years, and has had children born, the children are held to be Italians with the right to elect to remain so or not upon attaining their majority. The ground for this claim is not for reason of birth ; it is on the presumption that the ten years' residence of the

parent has made him an Italian subject. In Belgium the same principles govern as are laid down in the Code Napoleon.

In Spain the rule as recognized by the French has been made the Spanish rule.

THE RESULT OF THE APPLICATION OF THIS RULE OF INTER-  
PRETATION.

An application of these rules of construction as derived from the sources in which are found the principles of international law, to the acts of 1802 and 1868 seems to bring these acts properly within the international law rule as was purposed. The rule is to bring citizenship within the practice of nations in order thereby to insure to citizens of the United States equal protection abroad with all other aliens sojourning in a common country. The intercourse between states, the closer relations in commerce and trade, which necessitate the residence both temporary and permanent of citizens of one state in other states, seems to require that a general rule should govern as to the acquisition of citizenship. The principles of feudalism are accomplished with the necessities of trade and commerce, and the practice in the relations between states which grow out of them. Modern civilization has repudiated every vestige of the feudal law in this regard, with the exception of the rule in the English practice as to which there was a wide diversity of opinion among the commissioners in 1868. By them it has been freed from the unbending rule that allegiance was indelible. A child born of English parents in England is now a citizen by birth with the privilege, when the child

reaches majority, of choosing a citizenship compatible with its belief in its future welfare and prosperity. This relaxation of the common law rule is an approach toward the rule as known to the practice in the common law as recognized between nations.

The rule acquisition of citizenship by descent or extraction is a natural law, one which govern all mankind all the world over. Whereas the rule acquisition of citizenship for reason of locality of birth is merely a municipal law which can have no extra-territorial effect and never has had any as is obvious from the English practice, which in point of fact, recognized the rule of descent or extraction as to its subjects born of English parents in foreign countries, attaching, however, as a rule for municipal protection the indelibility of allegiance to the English sovereign.

PRACTICE UNDER THE RULE CITIZENSHIP BY DESCENT  
WITH GERMANY.

The case of Ludwig Hansding. He was born in the United States of German parentage; removed to his father's native land while a minor; his father subsequently became a naturalized citizen of the United States. Protection was denied him on the ground that he had never dwelt in the United States as a citizen of the United States. The father, by the act of naturalization, changed the citizenship of the son; but the son not having dwelt within the United States according to section 2172 of the Revised Statutes, Hansding was held to be a subject of Germany. Birth in the United States did not govern. Mr. Frelinghuysen, secretary of state to Mr. Kasson, January 15, 1885.



**WITH GERMANY.** The case of Richard Greisser. He was born in the United States. His father was at the time a German subject and domiciled in Germany. He left the United States with his mother to join his father in Germany, where during a portion of his minority he resided until the death of his father, at which time, and while still a minor, he went to Switzerland to reside. At the time of his birth, he was subject to a foreign power, following the citizenship of his father, who was a German, and being such under section 1992, Revised Statutes, was held to be a German and protection was denied him. Although under the fourteenth amendment of the constitution all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, yet following the citizenship of the father, he was held not to be subject to the jurisdiction of the United States and on this further ground the protection was denied him. Mr. Bayard, secretary of state, to Mr. Winchester, November 28, 1885.

The remarkable point in this case is that the applicant did not apparently claim protection as against the country of which his father was a citizen, but on general principles as a resident of Switzerland demanded a passport for protection in foreign countries as a citizen of the United States.

**WITH GERMANY.** An interesting case is that of one Hans. He was a posthumous child; his father was not naturalized but had acquired a permanent residence during four years' stay prior to his death. Soon after the death of the father, the mother took the son to Germany, where she resided with him continuously.

He applied for protection as a citizen of the United States. The question was whether the act of the mother in returning with her minor son could change the citizenship of the son, he being born in the United States.

By marriage, the father becomes the head of the family ; the wife becomes a member of the family and remains such together with the children which may be lawfully born to them. In case the father were a German and the wife an Englishwoman she would follow the citizenship of her husband as would the children. Suppose, however, that the Englishwoman had children by a former husband, an Englishman, and after his death she should marry a German ; the marriage with the German would change her citizenship, but not that of her children by her former husband. Her change of citizenship by an act, would not change with it the citizenship of the children for reason that she does not legally become the recognized head of the family ; in other words, the death of the husband does not change her relation to the family as that of member to that of head of the family. *Bluntschli Voelker Recht*, § 366 ; *Von de Bar*, § 31 ; 1 *Foelix*, pp. 54, 55, 94.

The son was in Germany at the time of his application for protection as against the demands of the German authorities to perform military duty as a subject of Germany.

It was held that, "As he is now in Germany the question is one which, if military service be insisted on, must be presented to the German government for consideration, and their views heard before this depart-

ment can express any final determination in this relation. Mr. Bayard, secretary of state, to Mr. Liebman, July 9, 1886; *Lamar vs. Mican*, 112 U. S. 452.

WITH GERMANY. It was laid down by Mr. Evarts, secretary of state, to Mr. White, June 6, 1879, as a rule, that children born in the United States, of former Germans naturalized in the United States, though taken back to Germany for a few years during minority and having returned to the United States during minority, were citizens upon reaching majority if they elected to become such.

This rule would hold so far as concerns the laws of the United States, provided the father did not change his citizenship by re-acquisition of his former German citizenship. If the father did so during the minority of his children, this act would carry with it a change in the citizenship of his children so far as concerns the German law; the children must then, in order to become citizens of the United States, comply with the statutes of naturalization and take up a permanent residence in the United States.

The condition on this rule is confirmed by Mr. Frelinghuysen, secretary of state, to Mr. O'Neil, August 8, 1882, wherein it is laid down: "A child born in this country to a German subject, is subject, if he put himself in German jurisdiction, to German laws." That is, provided the father, after his naturalization in the United States again becomes a subject of Germany. It follows without saying, that if the father never was naturalized in the United States, and while in the United States, had children born to

him, that the children follow the father's nationality, and upon return to Germany, the children become immediately subject to German law. This is laid down by Mr. Frelinghuysen to Mr. Cramer, June 4, 1883: "A child born in the United States to a foreign father, when taken by his father abroad, acquires the father's domicile and nationality."

WITH GERMANY. The case of Steinkauler. He was born in the United States. His father was a naturalized citizen; a native of Germany. Four years after the birth of his son, which was in 1855, he returned with his family, including his son, to Germany, and continued to reside there until 1875, when the German government called upon the son as a German subject to perform military service.

It was held, that "under the treaty as between the United States and the German government, and according to the rule declared in section 1999 of Revised Statutes, the father renounced his naturalization in America, and become a German subject. By virtue of the German laws, his son being a minor, also acquired German nationality. Having at the same time an American nationality by birth, he had thus a double nationality. 15 Op. Atty-Genl. 15.

Under this rule he followed the citizenship of the father. By the treaty which was ratified in 1868, between Germany and the United States, the father was presumed, after a continued residence of two years, to have renounced his American citizenship. This presumption of change in citizenship as to the father carried with it a change in the citizenship of the son. The son was held to perform military ser-

vice as a subject of Germany. The recognition of his claim as a citizen of the United States was denied him. This is borne out of the opinion of the attorney-general, who decided that the son had a double nationality. This double nationality may or may not be convenient. The position is not sustained by the authorities on international law. Either he was or was not a citizen of the United States. If he was a citizen of the United States, he was a citizen of the United States all the world over, in Germany, as well as elsewhere. Nothing short of this can be citizenship in the United States. The dictum that Steinkauler was a citizen of the United States when in the United States, and a subject of Germany when in Germany, is certainly a remarkable phase of American citizenship. This relation is denied in particular by the German authorities.

Bluntschli *Voelker Recht*, section 373, states: "The rule is, every individual can be bounden as citizen to only one state."

Chief Justice Cockburn: "Under a sound system of international law such a thing as a double nationality should not be suffered to exist."

Phillimore *International Law*: "An individual can have only one allegiance."

Field *International Law*: "One cannot be at one and the same time a citizen of two states."

Cicero *pro Balbo*: "According to our civil law no one can be a citizen of two cities at the same time."

The rule is well laid down by Phillimore *International Law*, volume I, page 38: "In this connection, that the son as long as he remains a minor follows the

citizenship of the father, whether the citizenship be original or acquired by naturalization."

Again, by Vattel in his *Law of Nations*, page 102, and Foelix's *Droit Internat. Privé*.

WITH GERMANY. Case of George Weigand. Born in the United States in 1850. His father was a native of Germany, and was a naturalized citizen of the United States, at the time of his son's birth. In 1871, the father and son visited Germany, and took up their residence in Cologne. In 1881, the son was summoned to do military service. He claimed protection and it was held by the German government after investigation, that Weigand could not be held. For. Rel. of U. S., 1882, p. 187.

WITH GERMANY. Case of Charles William Scheibert. He was born in the United States in 1856. His father had emigrated from Germany to the United States in 1856; became a naturalized citizen in 1864, and in 1869 with all his family returned to Germany, where they remained and were living in the year 1882, when the son Charles William was suddenly impressed into the military service. Protection was denied to him by the government of the United States because it proved upon investigation that the father had applied for naturalization as a German citizen and that the same had been granted to him. It was held that he was a German citizen. For. Rel. of U. S., 1883, p. 344.

WITH GERMANY. The case of John Charles Blesch. He was born in the United States of parents, natives of Germany, but naturalized citizens of the United States, in the year 1851. In 1859 he went to Germany

with his mother, his father having died in the meantime. In 1877, he asked protection as an American citizen from the United States. It was held that by his conduct neither he nor his mother by her conduct contemplated a return to the United States and the protection was, therefore, denied him. The rule laid down in *Steinkauler's* case was held to be applicable. It is difficult to perceive how it could be. Certainly any change in the citizenship of the mother would not affect the citizenship of the son. His father had died in the United States. The son became a citizen of the United States as the son of a father who was an American citizen at the time of his son's birth. In *Steinkauler's* case the father returned with the son; the father was a native of Germany and as such, having been naturalized in the United States, came within the provisions of the treaty of 1868. In the case of *Blesch*, no provision of the treaty is applicable. *For. Rel. of U. S.*, 1877, p. 247.

**WITH GERMANY.** The case of *Mrs. C. W. Kroemer*. Both she and her husband were natives of Wurtemberg. They were married in the United States and their children were born there. Her husband died in the United States, and she with her minor children resumed her residence in Wurtemberg in 1865. She preserved no domicile in America and paid no taxes. She owned property and paid taxes in Wurtemberg. She applied for a passport for protection for herself and her children, stating that she should, at some time, return to the United States for the benefit of her children. It was held that the passport could not be granted and remarked that the purpose was to prevent

the military authorities putting her sons in the army. For. Rel. of U. S., 1877, p. 247.

The ruling would seem to be correct. The children were born in America of parents aliens and subjects of a foreign power. The father had taken no steps to become a citizen of the United States. They were children of German parents born abroad, and under the German rule followed the citizenship of the father.

WITH GERMANY. Case of David Lemberger. He was born in the United States in 1862. His father was a native of Germany and in 1860 became a naturalized citizen of the United States. In 1870 he returned to Germany and there took up his residence, when in 1884 he was forced into the army to perform military service; but was subsequently released. Very soon thereafter he was given the option by the German government to become a German citizen or submit to expulsion from the country on the ground that he belonged to that class of Germans who use their American citizenship as a means for evasion of military duty. The question was determined on other grounds and he concluded to become a German citizen. For. Rel. of U. S., 1855, pp. 429, 436.

WITH FRANCE. Case of Alfred P. Jacob. Born in the United States of French parents, he was registered in the French consulate as a French subject by his father; subsequently his father became a naturalized citizen of the United States, and when Jacob was seventeen years of age he was given an American passport and then went to France, where he was impressed into the service as a French soldier and served for the term of four years. He was desirous that his name



should not remain on the French rolls after his service and applied to have it withdrawn. The French authorities took the position that Jacob's father having been a Frenchman when he was born, that Jacob followed his nationality until it had been decided by a court of competent jurisdiction in France, that the naturalization of the father in the United States effected a change in the citizenship of his son.

The government of the United States ruled that he was an American citizen, "his status as such dating from his father's naturalization." F. R. of U. S., 1883, p. 145.

WITH FRANCE. The case of Charles Drevet. His father came to the United States as a French citizen in 1852. In 1858, his father declared his intent to become a citizen of the United States. In 1859 he married an American lady. In 1860 he returned to France. In 1869, he returned to the United States and took out his second papers and shortly afterward resumed his residence in France. The son was born and always resided in France. Neither the son nor the father ever expressed any intention of residing in the United States.

He claimed protection, which was denied him. It was held that he was not entitled to recognition as a citizen of the United States. Mr. Bayard, secretary of state, to Mr. McLane, July 4, 1885.

The refusal was undoubtedly based on the clause, "dwelling in the United States," which the son had never done.

WITH FRANCE. The case of Eugene Albert Verdet. He was born in France. His father had resided

in the United States thirty five years and in 1853, became a naturalized citizen of the United States. In 1859 he returned to France where the applicant, his son, was born. It was held he was not entitled to protection from the United States, the reasons being that he had always resided in France and failed to express any intention of coming to the United States to reside, although property interests may render it necessary for him to visit the United States at some future time. Mr. Frelinghuysen, secretary of state, to Mr. Morton, November 9, 1883.

In connection with this case another point was considered. Verdelet, when born, was born as the son of a naturalized citizen of the United States, residing in a foreign country, and in this case in the country of his origin.

The Revised Statutes, section 1993, declare children born out of the limits of the United States, whose fathers were or may be at the time of their birth, citizens of the United States, to be citizens of the United States.

This statute is held to mean that the legislation of the United States should not be construed so as to interfere with the allegiance which such children so born owe to the country of their birth, while they continue within its territory. Under this, if the French government should see fit to hold Verdelet as a citizen of France for reason of birth within its territory, it might do so, and the government of the United States could not interfere with such a claim, if made by the French government upon him.

WITH FRANCE. In the case of a child born of

French parents in the United States who with his parents returned to France during his minority, it was held that after majority, having remained in France, he could not claim protection from the United States. Mr. Evarts, secretary of state, to Mr. Noyes, December 31, 1878.

WITH AUSTRIA. The case of Francois Heinrich. Born in the United States of citizens of Austria, and while temporarily sojourning in the United States. When of the age of two years he was taken by his parents to the empire of Austria and there resided for twenty years, when he made a claim for protection as an American citizen. It was held that he was not entitled to protection as a citizen of the United States, so long as he remained within the jurisdiction of the Austro-Hungarian dominion. F. R. of U. S., 1873, pp. 78, 79.

Under the statute of 1866 he was born of parents subject to a foreign power. It is not claimed that this statute was retroactive in its effect and, therefore, would not be applicable, Heinrich having been born in the United States in the year 1850.

Under the statute of 1802, all persons heretofore born or hereafter born of citizens of the United States, etc., are citizens thereof, he could not be included, because his parents were Austrians.

Under the Austrian rule, a foreign born child of Austrian parents takes the nationality of the latter and is regarded as an Austrian.

The Austrian government claimed him for service in the military as a subject of Austria. This service he was ordered to perform. The protection of the

United States was rightfully denied him. He followed throughout the citizenship of his father, which the father had never seen fit to change.

WITH AUSTRIA. The case of Frederick de Bourry. He was born in the United States of Austrian parents and resided in the United States for five years. He then returned with his mother to Austria, where he was subsequently joined by his father. At the time of making his application for protection he was in the employ of the Austrian government. He was then three years in his majority and his father had always retained his Austrian citizenship. He had taken no steps to elect his citizenship, even if a dual citizenship was claimed, and for this reason, in connection with his conduct in Austria, it was held that he had no intent to become a citizen of the United States and protection was denied him. Mr. Bayard, secretary of state, to Mr. Lee, July 24, 1886.

It has been held that an American citizen may enter the land or naval service of a foreign government, without divesting himself thereby of his rights of citizenship. *The Santissima Trinidad*, 1 Brockenhough, 478.

Therefore, by this act, he would not have lost his citizenship in the United States, if he had any.

But he was a child born to an alien in the United States, and lost his citizenship on leaving the United States, and returning to his parent's allegiance. Mr. Blaine, secretary of state to Mr. O'Neil, November 15, 1881.

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He followed the citizenship of his father; his father made no change of citizenship by which to affect that

of the son; the father retained his Austrian citizenship, as did the son. It is true that he was born in the United States, but was born of parents subject to a foreign power, namely, subject to Austria, which rule extended to the son, and on this ground the refusal could have been made.

**WITH AUSTRIA.** Case of Anton Wurgletts and family. Wurgletts emigrated from Hungary in 1851 to the United States. He became a naturalized citizen of the United States in 1856, where he lived sixteen years and had children born there. He returned to Hungary in 1869 and took his children with him. Application was made for protection on the ground that the children desired to return to America, though the father did not appear to intend personally to return to America. It was held that the family had retained its American citizenship and the protection was afforded. *F. R. of U. S.*, 1881, pp. 30, 52.

**WITH SWITZERLAND.** The case of Robert Emden. He was born in Switzerland, of parents naturalized in the United States. He himself had never been in the United States. The date of birth was 1862. The date of the father's naturalization in the United States was 1854. Soon thereafter, he returned to his country of origin, and continued to reside there, where his son was born in 1862.

It was held: "Undoubtedly, by the laws of nations, an infant child partakes of his father's nationality and domicile. But there are two difficulties in applying the rule in the present case. In the first place, a parent's nationality, cannot, especially when produced by naturalization, be presumed to be adhered to after

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a residence in the country of origin for so long a period as in the present case. In the second place, the rule as to children only applies to minors, since, when the child becomes of age he is required to elect between the country of his residence and the country of his alleged, technical allegiance. This may be inferred from the conduct of the parties.

"Applying these tests to the present case, it can hardly be said that Mr. Robert Emden's claim, to be a citizen of the United States, is as a matter of international law made out.

The protection was denied him. He was held not to be a citizen of the United States, and it was recommended that his proper course was to return to the United States and become naturalized. Mr. Bayard, secretary of state, to Mr. Winchester, September 14, 1885.

WITH SWITZERLAND. The case of Joseph Speck. He was born in the United States of Swiss parents. While a minor, his father returned with him to Switzerland. It was held that his status according to well understood principles of international and municipal law, followed that of the father, until the boy reached majority. For this reason no protection was extended to him. Mr. F. W. Seward, acting secretary of state, to Mr. Fish, August 20, 1878.

WITH ITALY. The case of John Peter Sharboro. He was born in the United States in 1852 of Italian parents; in 1860 his father became a naturalized citizen of the United States. At the time of his birth his father was a subject of Italy. He was a subject to a foreign power; the son followed the citizenship



of the father. When, however, the father became a citizen by naturalization, the act carried with it a change in the citizenship of the son, and the son thereby became a citizen of the United States. Mr. Fish, secretary of state, to Mr. Marsh, May 19, 1871.

**WITH CHINA.** The case of John Frederick Pearson. An American citizen born of American parents in the United States, by name Frederick Pearson, lived many years in China, and did business there. While there he married a Chinese woman, contracting the marriage under a law foreign to China, by whom he had children born, of whom John Frederick Pearson was one, who inquired as to his status in citizenship; the father died in China in 1868. During his youth he was educated for a time in the United States and in England, and subsequently returned to China. The applicant was born in China; lived in China continuously, with the exception of six years' residence abroad for his education. His dress and habits were Chinese, and his inquiry was for the purpose of gaining such advantages as American citizenship would give him, by registering himself as such with the American authorities.

It was not held definitely in what relation he did stand to the government of the United States.

In viewing the subject, the opinion rendered was as follows: "The rule of law undoubtedly is, that in doubtful cases the presumption in favor of legitimacy is to control, and the conclusion, therefore, must be that John Frederick Pearson, whose rights are here investigated, being a legitimate son of Frederick Pearson by a Chinese wife, assumes his father's nationality." Op. of Wharton, F. R. of U. S., 1885, p. 172.

The first question would be, what was the law of the United States at the date of the marriage of Frederick Pearson in China to a Chinese woman ; and second, what was it at the date of the birth of John Frederick Pearson.

There was at that date no law of the United States which prohibited the marriage of an American to a Chinese woman, and thus by that act of the American citizen, the citizenship of husband was conferred on his wife. This was the law of marriage with foreigners and the Chinese women were no exception.

Again there was at that date no law of the United States which prohibited Chinese from becoming citizens of the United States. Pearson's father was a citizen of the United States ; as such he (John) shared the citizenship of his father.

His mother became an American citizen by the marriage and the son became an American by right of descent from the father.

With the exception of some few years' residence in the United States for education, which cannot be considered as any purpose on his part to reside in the United States, he has always resided in China, and expressed no intent to reside in the United States.

John Frederick Pearson had never dwelt in the United States with bona fide intent to affect his citizenship. He had passed the age of majority and had made no election to retain or renounce his American citizenship. It remained to be inferred and the inference must be with a view to his age at the time of his application, at this time he was thirty-two years old.

"By virtue of the treaty between the United States and China of 1844, all citizens of the United States in China, enjoy complete rights of extra-territoriality and are answerable to no authority but that of the United States." 7 Op. Atty.-Genls. 495.

If by the treaty, such children were to be held by a fiction of law to be born in the United States, the case of Pearson would seem clear at the time of his birth. Another element, however, seems to enter into the discussion; that is, does the law of China sanction the marriage of a Chinese woman to an alien? Should it not, then, by that law, the child would be illegitimate and follow the citizenship of the mother. The marriage was contracted in China, and as such was a matter of record, but not among the records of the Chinese authorities.

The claimant being in China is governed by Chinese law, if that government should maintain that the marriage was illegal. Were he in the United States, the question of the legitimacy of the marriage would be governed by the law of China affecting the capacity of the mother to enter into the marriage contract.

Should, however, the law of China not present such a marriage, then it would seem that the extra-territoriality extended to citizens of the United States there residing, would govern.

It cannot be held that subsequent legislation on the Chinese question should have any retroactive effect, only in this regard that it might prevent his election to become a citizen of the United States, the Chinese being excluded from the acquisition of that right. This legislation was in 1876. When reaching

majority, he failed to exercise the right of election, which was in 1875. Having failed to do so the exercise of the right could be denied him subsequent to the legislation as passed by Congress.

CONCLUSIONS FROM THE PRACTICE OF THE UNITED STATES.

The rule to be deduced from the practice in these cases is, that the child follows the citizenship of the parent. That the citizenship of the child follows that of the parent, and changes whenever the parent sees fit to make a change.

This rule seems from the practice to be subject to conditions precedent, which conditions are purely autonomous and are open to question as to their influence on the practice under the international common law rules.

Under sections 1992 and 1993 of the Revised Statutes of the United States, children born of parents residing in the United States, subjects to foreign powers, do not become citizens. This is in consonance with the international law rule. Should, however, the parent subsequent to the birth of the child become naturalized, then this act of naturalization carries with it a change in the citizenship of the child, as was held in the case of Jacob hereinbefore cited. Should, however, the child depart from the United States prior to the act of naturalization by the parent, then it has been held that the act of naturalization of the parent does not effect a change in the citizenship of the child unless the child has resided within the United States after the act of naturalization of the parent. This was held in the case of Hansding, hereinbefore cited, under section 2172 of the Revised

Statutes of the United States. This rule as laid down in the case of *Hansding* is an innovation on the practice. Contrary to the general rule that a change by the parent in his citizenship carries with it a change in the citizenship of his child, the United States cannot by a local law declare the child of one of its citizens to be a citizen of nowhere as was done in the case of *Hansding*. There must be a general concurrence of all states in the practice in order to establish such a rule. If the parent, *Hansding's* father, had lawfully departed from Germany, and had lawfully become a citizen of the United States, what was at that time the citizenship of the child? Under the German rule, the child follows the citizenship of the parent. Again, in the case of *Blesch*, hereinbefore cited, the question of dwelling in the United States is overcome, for he had dwelt in the United States. The refusal to protect him declared him to be a citizen of nowhere. The German government did not claim him, nor was it as against that government that the protection was sought. The government of the United States proceeded upon an inference of an intent construed from his acts, that he did not intend to reside in the United States. For this there appears to be no statute which governs.

It is well settled in the practice that every individual must be a member of some society or state. It is well defined in *Field's International Code*, page 130, that "a person who has ceased to be a member of a nation without having acquired another national character, is, nevertheless, deemed to be a member of the nation to which he last belonged.

"The United States has not the power to declare its members to be citizens of nowhere, and cast them upon other civilized governments for protection. The error of such declarations would be more apparent should the necessity of support arise for reason of such members becoming paupers."

Under this same rule may be brought the discussion in Emden's case hereinbefore cited, which was, that a naturalized citizen of the United States after a prolonged residence in the country of his origin loses his citizenship in the United States. For this there is no statute nor any law by which a distinction can legally be drawn between citizens of the United States. When the citizenship is lawfully acquired no destruction is possible. It is not a question of the manner, provided the acquisition is legal. The citizenship carries with it protection all the world over, and one citizen is entitled to the same protection when abroad as is every other citizen of the United States.

#### CITIZENSHIP BY NATURALIZATION IN THE UNITED STATES.

Naturalization signifies the act of adopting a foreigner and clothing him with the rights of a citizen.

Every state exercises the power of determining who shall enjoy the rights of membership of the political society or body politic of which it consists, and those who are invested by the municipal constitution and laws of a country with this quality or character, and none others, are citizens of the society.

This investiture must be in pursuance of the laws of the society by which a change in citizenship can be effected.

Prior to the passage of a general naturalization law by the congress of the United States, the states in their individual capacity took it upon themselves to legislate on this question, and to prescribe the method by which membership in these respective states might be acquired.

When, however, the act of 1802 was passed, these rules as prescribed by the different states were of necessity abrogated, and naturalization was alone possible under the acts of the United States.

#### EXPATRIATION.

The alien seeking citizenship by naturalization in the United States comes from a foreign society. Any rules or regulations which may confer the right of expatriation on citizens of the United States do not in any wise affect the rights of such alien to leave his country; it matters not what may or may not be the municipal rules as established in the United States. These rules do not and cannot govern the act of departure of an alien from the country of his origin, nor are they under any circumstances applicable to his case. This right to expatriate himself from the country of his origin, and his right of departure therefrom, is regulated by such rules and regulations as govern in the country of his origin. Upon the rules no tribunal in the United States can definitely pass any judgment which will be of any validity in the country where such rules are prescribed. That these rules are different in different countries is beyond a doubt, and the effect of such rules is a matter of local autonomy in each particular society.

## THE PRESUMPTION.

The presumption upon which the courts of the United States proceed is that the applicant had the right to expatriate himself, and having done so pursuant to his wishes and intent, seeks citizenship by naturalization in the United States. There is no inquiry instituted, nor is any examination prescribed either as to law or fact, as regards the right of the applicant to depart from the country of his origin. It is presumed that he is in full exercise of his rights in this regard, and no court presumes to pass upon the question. The alien simply offers himself for citizenship in compliance with the rules which govern naturalization in the United States.

## THE DECLARATION OF INTENT.

This is strictly an expression on the part of the alien of his intention to renounce his allegiance to the country of his origin, and become a citizen of the United States. It is nothing more and nothing less. It is entered upon the records of the court, and nothing further may be done by the applicant toward naturalization by which citizenship is acquired. As a matter of record, this declaration of intent so made by the applicant may raise a question of good moral character. It is open to any person or persons to answer the declaration of intent by furnishing evidence to show that the applicant is not a fit and proper person to be admitted to citizenship in the United States, and the court sitting in the case may hear the parties, and pass judgment, either allowing or disallowing the declaration of the applicant, and permitting or refusing him the right to proceed and perfect his naturalization.



A case in point is Spencer's case in 5 Sawyer, 195, where evidence of conviction of a crime more than five years prior to his application for naturalization, but after arrival of the applicant at this country, was held to be a bar to naturalization.

#### OTHER PREREQUISITES TO CITIZENSHIP.

After the declaration of intention to become a citizen has been filed, the applicant shall remain in the United States for a term of years, and during that time shall sustain a good moral character.

By his acts and doings he shall attach himself to the principles of the constitution of the United States, and show himself to be well disposed to the good order and happiness of the same.

Upon these points he is to furnish two reliable witnesses, who will testify under oath in his behalf, and submit to any examination which may have reference to the applicant during his residence in the United States, from the date of his arrival to the date of the hearing on his application.

The applicant then takes the oath to support the constitution of the United States, and renounce all allegiance and fidelity to every foreign power.

#### QUALIFIED NATURALIZATION.

Citizenship is not conferred until all the requirements of the naturalization laws have been complied with.

Qualified naturalization cannot exist. Such a relation would be a stultification of the rights of autonomy in the country in which such a principle was recognized. To make naturalization depend on the laws of another

country, or to await the pleasure of some foreign sovereign would work an injustice to man in his exercise of his right of removal.

Were our courts obliged to await some act or some authorization from a foreign government as a condition precedent before it proceeded to a hearing on a petition of an alien for naturalization, the effect could not be predicted, and the wrong which could thus be done would be a hardship to the applicant. Mr. Frelinghuysen, secretary of state, to Mr. Cramer, October 19, 1882.

Any pre-existing obligations to the country of the applicant's origin cannot be made subjects of inquiry. Should the applicant subsequently return, the government of the country in which he was naturalized will not protect him as against their fulfilment or punishment for default in their performance before his departure.

#### EFFECT OF THE NATURALIZATION ON THE MINOR CHILDREN OF THE APPLICANT.

The principle *partus sequuntur patrem* is here demonstrated. The act of the father carries with it a change of citizenship; this change, by implication, carries with it a change in the citizenship of the minor children, who thereby become citizens of the United States. The children must, however, in order to become citizens upon reaching majority, by virtue of the act of naturalization of the parent, reside within the United States.

Under section 2172 of the Revised Statutes, originally enacted in 1802, a child of a naturalized

citizen of the United States, in order to become himself a citizen of the United States, must dwell therein.

The doctrine of the changing of an infant's nationality with the nationality and domicile of the father rests on the assumption that such is the will of the father, and that the change is in submission to his paternal power. 10 Op. Atty.-Genls. 329.

Children born abroad of aliens who subsequently emigrated to this country with their families and were naturalized here during the minority of their children are citizens of the United States.

A case in point is that of a Spanish subject by birth who was naturalized in the United States in February, 1876, and thereupon his son, aged twenty, who was born in the island of Cuba, applied to the state department for a passport, stating that he had resided in the United States for five years, but that it was his intention to resume his residence in the Spanish dominions, and engage in business there.

It was held that the son, being a minor at the time of his father's naturalization, must be considered a citizen within the meaning of section 2172, Revised Statutes, and as such entitled to a passport, and that the circumstance that he intended to reside in the country of his birth did not make him less entitled than if his destination were elsewhere. 15 Op. Atty.-Genls. 114.

#### EXCEPTIONS TO THIS RULE.

The father must have complied with the naturalization laws in order to become a citizen, by which act the citizenship is conferred to his minor children. To

this general rule there is an exception, and probably not more than one. For example. An alien comes to the United States leaving his minor children in the country of his origin. He takes no steps to bring them to the United States during the period of time essential for compliance with the naturalization laws, and after he has been naturalized, he suffers his minor children to remain in the country from which he departed. Under these circumstances, the United States cannot undertake to assume that the citizenship of the father as acquired in the United States by him was conferred on his minor children, who had remained in the country of his origin, and also still continued to remain there. A claim by them for protection for reason of the citizenship of the father would not be accorded, not for reason of the principle that they followed the citizenship of the father, but for reason of section 2172 of the Revised Statutes.

A case in point is that of "a boy of eighteen years, who has never been out of Germany, but whose father is a naturalized citizen of and resident in the United States, is not entitled to obtain the interposition of this government to secure him from military service in Germany, nor to relieve him from being detained in Germany for that purpose." Mr. Evarts, secretary of state, to Mr. Caldwell, March 6, 1880.

Although this exception is special in its application to this case, and for the reasons given protection was properly refused, the boy being then of the age required for performance of a special obligation to the country of his origin, the same could have been avoided had the father taken him to his own place of

residence in the United States when he was of such age as to permit of his departure from the country of his nativity. It does not decide as fully as might be wished the question of citizenship; it only decides that the government of the United States would not interfere to prevent the German government in imposing an obligation which was then existing, and while he still remained within the jurisdiction of the German government.

The case of Robert Emden was this. He was born in Switzerland in 1862, and at the time of his application to the United States government for protection in 1885, he had never lived in the United States.

His father, a Swiss by origin, was naturalized in New York in 1854, but soon afterward returned to Switzerland, where he continued afterward to reside. The protection was denied, and the conclusion reached, that in order to be entitled to protection, he must emigrate to the United States, and be naturalized.

“Undoubtedly by the law of nations an infant child partakes of his father’s nationality and domicile. But there are two difficulties in the way of applying this rule to the present case. In the first place, a parent’s nationality cannot, especially when produced by naturalization, be presumed to be adhered to after a residence in the country of origin for so long a period as in the present case.

“In the second place, the rule as to children only applies to minors, since when the child becomes of age, he is required to elect between the country of his residence and the country of his alleged technical

allegiance. Of this election, two incidents are to be observed.

“When once made, it is final, and it requires no formal act, but may be inferred from the conduct of the party from whom the election is required.” F. R. of U. S., 1885, page 811.

Although this protection may be denied, and the rule as laid down guide the action of the government of the United States, yet it does not follow, because the protection is refused as in Emden’s case, that he may not be regarded as a citizen of the United States by Switzerland. The regulation which requires residence in the United States is municipal, and the acquisition of citizenship is by municipal rules prescribed by the different states; notwithstanding this, suppose that Switzerland should hold that Emden was by descent a citizen of the United States, as the son of a citizen of the United States, being born of parents residing abroad, not under the rule as laid down in 1802, but under the international common law rule.

Reverse the rule, and suppose that a citizen of the United States had become a naturalized citizen of Switzerland, and should then return to the United States, and should there reside, and his son should be born in the United States, and always reside there with the father, the United States would hold, under the rule of 1868, that he was a child born of a subject of a foreign power. This would seem to be the rule which should govern.

A son cannot be held to perform the duties incumbent on a father unfulfilled before emigration.

The case was where the son of a naturalized citizen

of the United States, who had emigrated from Spain, was called upon to perform his father's military service. The son was living in Spain, and within the jurisdiction of the government of that country, and the demand was made upon him to perform his father's services.

It was held that: "The son living in Spain, of a naturalized citizen of the United States, cannot, consistently with the laws of nations, be required by that country 'vicariously' to perform his father's military services."

EFFECT OF NATURALIZATION ON THE WIFE OF THE APPLICANT.

An alien migrates to the United States from the country of his origin with a wife born in the same country as is the applicant. He becomes a citizen by naturalization, pursuant to the rules and regulations therefor made and provided. This act confers upon his wife the same citizenship as that acquired by the husband under the laws of the United States.

The same principle governs as in case of the minor children.

The statute, however, does not declare that residence of the wife in the United States is an essential requisite to her acquisition of the rights and privileges of a citizen.

It would seem unnecessary that any particular provision should be made to meet these cases, as they seem to be provided for by implication under section 2172 of the Revised Statutes.

The change is assumed to be made in submission to the husband's paternal power.

**DECLARATION OF INTENTION DOES NOT CONFER RIGHTS OF  
CITIZENSHIP WITHIN THE UNITED STATES.**

When the applicant has filed his intention to become a citizen of the United States, by this act he has not made any change from his former allegiance; he has declared what he may do at some future date, provided no objections are entered to prevent his execution of his purpose in the courts at the final hearing on his application. This does not confer any rights; he remains subject to the laws precisely as other residents whether citizens or not within the United States, but cannot partake in the representation, or be represented in the lawmaking branch of the government. He is not entitled to the right of suffrage, which a citizen can exercise, and by the exercise of which he tacitly subscribes to the compact of government under which he lives.

Although, in some of the states, the right of suffrage is conferred on males of foreign birth, who have declared their intentions to become citizens according to the United States naturalization laws, as in Indiana, Wisconsin, Minnesota, Kansas, Missouri, Arkansas, Texas, Oregon, Colorado, Alabama, Florida and Louisiana, this must be viewed as being conferred by a mere municipal state regulation, which in itself is dangerous. Certainly, it cannot be expected that the national government would take any cognizance of this fact, in passing upon the right to protection when abroad of such an alien who would attempt to claim protection because he had declared his intent to become a citizen of the United States, and had exercised the right of suffrage in some fixed locality within the



United States. Not until the alien has been finally admitted to citizenship is he a citizen, and such only are entitled to protection when abroad. It is doubtful if in these states, by which this right of suffrage is conferred upon such aliens as have declared their intent to become citizens, carries with it the right to represent citizens of these states in the legislative branch of the local government.

**DECLARATION OF INTENTION TO BECOME A CITIZEN OF THE UNITED STATES DOES NOT CONFER RIGHTS OF CITIZENSHIP WITHOUT THE UNITED STATES.**

An alien having simply declared his purpose to become a citizen, and going abroad, does not take with him any right to claim protection. He may go to the country of his origin; going to that country, he simply returns as a subject of the government of that country, for he has never changed his allegiance.

Declaration of intention to become a citizen does not clothe the individual with the nationality of this country so as to enable him to return to his native land without being subject to all the laws thereof.

The rule is not upheld with the same stringency in case the applicant for citizenship in the United States goes to a country other than the one of origin.

A declaration of intention to accept nationality may give the declarant the quasi right to protection by the United States, as against a third sovereign. F. R. of U. S., 1884, p. 552; F. R. of U. S., 1884, p. 560.

Under this rule, each case must be considered with a view to two important points:

Does the applicant for citizenship depart after filing

his declaration with the intent of making his absence of a temporary character; or, does the applicant depart with the intent of making his absence of a permanent character, *sine animo revertendi*?

In the first instance, the government may remonstrate against any interference on the part of the government of his origin to restrain him from perfecting his naturalization. This can only be a remonstrance, and not a demand as of right, in the sense of a claim upon him as a citizen of the United States as against a claim of the government of the country of his origin, for the performance of existing duties and obligations as a citizen of that country.

As against a third and disinterested government, the claim can be made as of right, for that country can have no claim upon him different from what it has on any sojourner within its territory.

In the case of Koszta. He had declared his intention to become a citizen of the United States, and went temporarily to the territory of a third sovereign. He went to Turkey, the country of his original allegiance being Austria. While in Turkey he was arrested by Austrian officials. He went *animo revertendi*, and the government of the United States asserted its right as against any interference with him, in the perfection of his intent and purpose to become a citizen of the United States.

In the case of Burnato. He was a Mexican by birth; came to the United States; declared his intent to become a citizen of the United States; took up his residence in the United States, and temporarily returned to Mexico; the Mexican government held him for

military service. The interference of the government of the United States released him.

This should be taken as one of those exceptional cases, which it was possible to enforce as against Mexico, but which has not been as successfully enforced against some other countries.

The rule as laid down by Mr. Frelinghuysen as above quoted, as among the possibilities that such a claim can be successfully presented, but not as a positive certainty.

In the second instance, the case of Walsh was somewhat different. Mr. Walsh came to the United States, declared his intention to become a citizen, and immediately thereafter established himself in business in Mexico; by so doing he disrupted his residence in the United States, and failed to show an intent of maintaining a continuous residence in the United States.

It was held that he left the United States *sine animo revertendi*, and protection was refused him.

In the case of Abdellah Saab, a native of Turkey, who had declared his intention to become a citizen of the United States, it was held, that so far as his political rights were concerned, he could have no claim on the government in case of return to his native country. Mr. Bayard, secretary of state, to Mr. Williams, October 29, 1885; Mr. Bayard, secretary of state, to Mr. Cain, January 28, 1886.

**DECLARATION OF INTENTION TO BECOME AN AMERICAN CITIZEN MAY CONFER RIGHTS TO PROTECTION IN SEMI-CIVILIZED COUNTRIES.**

This rule proceeds upon the civilized relations as existing between members of the family of nations as

contra-distinguished from the barbarous or less civilized world. It is more for reason of that general protection which all civilized nations alike furnish to the inhabitants of civilized nations as against barbarians.

"Although a mere declaration of intent does not confer citizenship, yet under peculiar circumstances, in a Mohammedan or semi-barbarous land, it may sustain an appeal to the good offices of a diplomatic representative of the United States in such land." Mr. Cass, secretary of state, to Mr. De Leon, August 18, 1858.

The interference in Martin Koszta's case, proceeded in part upon these grounds. Mr. Marcy, secretary of state, to Mr. Marsh, August 26, 1853.

#### FRAUDULENT NATURALIZATION.

The act of naturalization is a matter of record, and is so made by statute. The admission of the applicant to citizenship is a naturalization judgment of the court, and is so recorded. *Spratt v. Spratt*, 4 Peters, 393.

The record of naturalization is *prima facie* evidence of the facts which it recites. It is not, however, conclusive.

In the case of Moses Stern, whose certificate of naturalization recited all the facts required under the naturalization laws, it was found upon investigation, as a matter of fact, that he had not resided uninterruptedly for a term of five years within the United States.

Mr. Stern was a native of Germany; had been naturalized in the United States, and returned to

Germany. There he claimed rights, privileges and immunities, as a citizen of the United States. His claim was considered with the above result, and the protection refused. Mr. Fish, secretary of state, to Mr. Wing, April 6, 1871.

It is very often the case that certificates of naturalization bear on their face errors which are fatal; in such cases, it is within the power of the authorities who are to consider the claim to protection made under them to refuse their protection.

The same authorities can pass upon the question whether or not protection shall be accorded where the certificate of naturalization not bearing errors on the face, yet are traversed, and disputed facts arise; they must pass upon the question and ascertain the correctness of the recitals before the protection is extended. There is no other way by which to prevent fraud; for the government ought not to extend protection to those claiming under fraudulent certificates of naturalization. Mr. Fish, secretary of state, to Mr. Moran, February 16, 1877. Mr. Bayard, secretary of state, to Mr. Francis, May 20, 1885.

THE RIGHT TO PROTECTION WHEN WITHIN THE UNITED STATES, OF CITIZENS OF THE UNITED STATES.

When once admitted to citizenship, whether by descent, by naturalization, or marriage, all citizens are equal in the enjoyment of rights, privileges and immunities when within the limits of the United States.

THE RIGHT OF EXPATRIATION AS APPERTAINING TO CITIZENS OF THE UNITED STATES.

The act of congress, adopted July 27, 1868, is self-explanatory.

Prior to the passage of this act, the right had been declared as an existing right by the publicists. Mr. Webster, secretary of state, to Mr. Thompson, July 8, 1842, laid down the rule as follows: "The United States have not passed any law restraining their own citizens, native or naturalized, from leaving the country and forming political relations elsewhere.

"Nor do other governments in modern times attempt any such thing. It is true that there are governments which assert the principle of perpetual allegiance; yet, even in cases where this is not rather a matter of theory than of practice, the duties of this supposed continuing allegiance are left to be demanded of the subject himself, when within the reach of the power of his former government, and as exigencies may arise, and are not attempted to be enforced by the imposition of previous restraint preventing men from leaving their country."

"The individual right of expatriation being admitted, the correlative right of the state to determine what acts are to be taken as evidence of such expatriation necessarily follows — it is a necessary and inevitable corollary." Mr. Fish, secretary of state, to Mr. Davis, June 28, 1875.

Although the right of expatriation was at one time denied in this country (Williams' case, Whart. St. Tr., 652), it is now regarded as established in international law. *Santissima Trinidad*, 7 Wheat. 283; *Portier v. LeRoy*, 1 Yeates (Penn.), 371; *Jansen v. The Vrow Christina Magdalena*, Bee Adm. 11, 23; *Talbot v. Jansen*, 3 Dall. 383.

The United States recognize the right of voluntary

expatriation, subject to such limitations as congress may impose. 8 Op. 139, Cushing, 1856.

A citizen of the United States, native or naturalized, may change his allegiance, provided it be done in time of peace, and for a purpose not directly injurious to the interests of the country. 9 Op. 69, Black, 1857.

The natural right of every free person who owes no debts, and is not guilty of any crime, to leave the country of his birth, in good faith and for an honest purpose, the privilege of throwing off his natural allegiance and substituting another in its place, the general right, in a word, of expatriation, is incontestable. 9 Op. 356, Black, 1859.

The declaration in the act of July 27, 1868, chapter 249, that the right of expatriation is "a natural and inherent right of all people," applies to citizens of the United States as well as to those of other countries. 14 Op. 295, Williams, 1873.

The natural right of every free person, who owes no debt, and is not guilty of any crime, to leave the country of his birth in good faith and for an honest purpose—the privilege of throwing off his natural allegiance and substituting another allegiance in its place—is incontestable. Christian Ernst's case, 9 Op. 356, Black, 1859.

Our knowledge of international law is not taken from the municipal code of England, but from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations; and they are all opposed to the doctrine of perpetual allegiance. *Id.*

In the United States, ever since our independence, we have upheld and maintained the right of expatri-

ation by every form of words and acts, and upon the faith of the pledge which we have given to it, millions of persons have staked their most important interests. *Id.*

A native born citizen of the United States, who has been naturalized in a foreign country, and thus becomes a citizen or subject thereof, is to be regarded as an alien; and he cannot re-acquire American nationality, except in conformity to laws of the United States, providing for the admission of aliens to citizenship therein. *Reply to President's questions*, 14 Op. 295, Williams, 1873.

If a native American can expatriate himself, he divests himself, by the very act of expatriation, as well of the obligations as of the rights of a citizen. He becomes, *ipso facto*, an alien; his lands are escheatable, and the rights appertaining to citizenship, once lost, cannot be recovered by residence, but he must go through the formula prescribed by law, for the naturalization of an alien born. *The Santissima Trinidad*, 1 Brockenbrough, 478.

Any citizen of the United States, native or naturalized, may remove from the country and change his allegiance, provided this be done in time of peace, and for a purpose not directly injurious to the interests of this government. *Amther's case*, 9 Op. 62, Black, 1857.

#### THE PRINCIPLE OF EXISTING AND UNFULFILLED OBLIGATIONS.

In the United States by its local law, no impediment is offered to the exercise of the right of expatriation. There seem to be no obligations arising from



fact of birth, nor for reason of citizenship which must be performed before the emigrant from the United States can lawfully depart, the failure to fulfill which obligation would entail upon the emigrant on return to the United States a punishment. There is no prescription by which it is set forth in what manner the departure shall be made. No permission is requisite; no license is granted, and no record of departures and returns is kept by which to ascertain the motive or the intent of the emigrant in leaving the country.

**THE MEANING OF THE TERM "EXPATRIATION."**

The act of expatriation includes not only emigration but also, naturalization. Under this rule the act of departure in itself is emigration; if subsequent to the departure the emigrant becomes naturalized in a foreign country he then expatriates himself; thus by expatriation he has lost his citizenship in the United States. By the simple act of emigration the emigrant does not lose his citizenship. 9 Op. Atty-Genls. 356.

**THE RIGHT OF EXPATRIATION AS RECOGNIZED BY TREATIES BETWEEN THE UNITED STATES AND OTHER COUNTRIES.**

What are treaties?

By the law of nations a treaty is a mutual pledge of faith between sovereign powers. 1 Vattel, Law of Nations, book 2, chapter 12.

It is a law under the constitution of the United States.

All treaties made, or which shall be made under the authority of the United States, should be the supreme law of the land. 1 Kent's Com. 162.

It is made by the president of the United States, provided two-thirds of the members of the senate present concur.

A treaty of naturalization between the United States and a foreign power does not yield to an act of congress. It supersedes existing statutes on the same subject so far as the existing statutes were applicable to rights as between the citizens of the sovereign powers contracting. Mr. Fish to Mr. Cushing, July 20, 1876, and Feb. 13, 1877. An abrogation of such a treaty places the statute existing prior to the ratification of the treaty again in force as regards the rights of the citizens of the contracting parties.

As between foreign and independent sovereign powers, recognized in the family of nations, the stipulations in the treaties are held to be declarations of the law of the land which govern the subject-matter to which the treaties refer.

The decision in *Turner vs. The American Baptist Missionary Union*, that a treaty with Indian tribes has the same dignity and effect as a treaty with a foreign power, being a treaty within the constitution, and the supreme law of the land is not in point; no more than is the rule that a statute stands on equal footing with a treaty with a foreign power.

A foreign government takes no cognizance of a municipal statute; it adheres to the treaty which is expressive of the statute, and in most countries is identical.

As between a statute and a treaty with an Indian tribe, one of the wards of the nation, the footing may be the same, but as between a statute and a foreign

independent sovereign power, the footing is different. In the latter case, the principles of international law govern and the abrogation of the treaty is to be by the same power by which it was enacted, and is to be done by notice to the other contracting party in accordance with usage as between sovereign states. The president and two-thirds of the senate present can abrogate that which it has made. Mr. Fish, secretary of state, to Mr. Cushing, February 13, 1877

THE TREATIES ENTERED INTO BETWEEN THE UNITED STATES AND OTHER FOREIGN POWERS ON NATURALIZATION AND EXPATRIATION WERE WITH THE FOLLOWING SOVEREIGN STATES.

The North German union, kingdom of Bavaria, kingdom of Wurtemberg, grand duchy of Baden, duchy of Hesse-Darmstadt, Great Britain, kingdom of Belgium, Austro-Hungarian monarchy, kingdom of Denmark, kingdom of Norway and Sweden, republic of Ecuador.

WHAT CHANGES DID THESE TREATIES MAKE ON EXISTING STATUTES, IN THEIR EFFECT ON EXPATRIATION?

The right was one which was acknowledged and recognized in the compact of government by which the government was founded. So far as the effect of these treaties is concerned on the rights of the citizens of the United States, they worked no change in their status to the government. The right to depart to the particular sovereign states with which the treaties were made, existed prior to the ratification of the treaties. The right existed to depart to sovereign states other than to those with which the treaties were made. The right is a general right and is not

limited in its exercise to any sovereign state to the exclusion of others.

The law is "citizens of the United States possess the right of voluntary expatriation subject to such limitations in the interest of the state as the law of nations or the acts of congress may impose." 8 Op. Atty-Genls. 139.

The rule in *Anther's case* is as follows: "Any citizen of the United States, native or naturalized, may remove from the country and change his allegiance, provided this be done in time of peace and for a purpose not directly injurious to the interests of this government." 9 Op. Atty-Genls. 62.

The act of July 27, 1868, which was merely declaratory of an existing right and of a right which was exercised, was not changed by the treaties.

THE RIGHT OF PROTECTION WHEN ABROAD OF NATURALIZED CITIZENS OF THE UNITED STATES.

An alien who emigrates to the United States and becomes a citizen by naturalization is adjudged to be a citizen by a court of record. Judgment is entered to that effect after final hearing. The court proceeds upon the presumption that the applicant makes his application with right, so far as his relations and status to the country of his origin are concerned. These relations are not made matters of inquiry in the court in which the application for citizenship is made; they are questions which the laws of the country of the applicant's origin must determine. By the treaties on naturalization, as ratified by and between the United States and other sovereign countries, certain

rules have been adopted. These rules do not apply to naturalized citizens when abroad in countries other than those of their origin. In those countries no questions can arise of a like nature ; they are equally entitled to protection with all other citizens of the United States.

“In regard to the protection of our citizens in their rights at home and abroad we have in the United States no law which divides them into classes or makes any difference whatsoever between them.” 9 Op. Atty-Genls. 356.

THE RULES AS LAID DOWN WITH CERTAIN SOVEREIGN  
STATES.

THE RULE WHICH GOVERNS WITH THE NORTH GERMAN UNION.

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration ; saving, always, the limitation established by the laws of his original country.

THE RULE WHICH GOVERNS WITH GRAND DUCHY OF BADEN.

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving, always, the limitation established by the laws of his original country, or any other remission of liability to punishment. In particular, a former Badener, who, under the first article, is to be held as an American citizen, is liable to trial and

punishment according to the laws of Baden, for non-fulfillment of military duty.

1. If he has emigrated after he, on occasion of the draft from those owing military duty, has been enrolled as a recruit for service in the standing army.

2. If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time.

3. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former Badener, naturalized in the United States, who, by or after his emigration, has transgressed or shall transgress the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered one to three, can, on his return to the original, neither be held subsequently to military service nor remain liable to trial and punishment for the non-fulfillment of his military duty. Moreover, the attachment on the property of an emigrant for non-fulfillment of his military duty, except in the cases designated in the clauses numbered one to three, shall be removed so soon as he shall prove his naturalization in the United States according to the first article.

**THE RULE WHICH GOVERNS WITH THE KINGDOM OF WURTEMBERG.**

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable

by the laws of his original country, and committed before his emigration; saving, always, the limitation established by the laws of his original country, or any other remission of liability to punishment.

**THE RULE WHICH GOVERNS WITH THE GRAND DUCHY OF HESSE-DARMSTADT.**

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration; saving, always, the limitation established by the laws of his original country.

**THE RULE WHICH GOVERNS WITH THE KINGDOM OF BAVARIA.**

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration; saving, always, the limitation established by the laws of his original country or any other remission of liability to punishment.

**THE RULE WHICH GOVERNS WITH THE KINGDOM OF NORWAY AND SWEDEN.**

Article II. A recognized citizen of the one party, on returning to the territory of the other, remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration, but not for the emigration itself; saving, always, the limitation established by the laws of his original country and any other remission of liability to punishment.

**THE RULE WHICH GOVERNS WITH THE KINGDOM OF DENMARK.**

Article II. If any such citizen of the United

States, as aforesaid, naturalized within the kingdom of Denmark as a Danish subject, should renew his residence in the United States, the United States government may, on his application, and on such conditions as that government may see fit to impose, readmit him to the character and privileges of a citizen of the United States, and the Danish government shall not, in that case, claim him as a Danish subject on account of his former naturalization.

In like manner, if any such Danish subject, as aforesaid, naturalized within the United States as a citizen thereof, should renew his residence within the kingdom of Denmark, his majesty's government may, on his application, and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a Danish subject, and the United States government shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

THE RULE WHICH GOVERNS WITH THE AUSTRO-HUNGARIAN MONARCHY.

Article II. A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country committed before his emigration; saving, always, the limitation established by the laws of his original country and any other remission of liability to punishment.

In particular, a former citizen of the Austro-Hungarian monarchy, who, under the first article, is to be held as an American citizen, is liable to trial and punishment, according to the laws of Austro-Hungary, for non-fulfillment of military duty.



1. If he has emigrated, after having been drafted at the time of conscription and thus having become enrolled as a recruit for service in the standing army.

2. If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time.

3. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former citizen of the Austro-Hungarian monarchy naturalized in the United States, who, by or after his emigration has transgressed the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered one, two and three, can, on his return to his original country, neither be held subsequently to military service nor remain liable to trial and punishment for the non-fulfillment of his military duty.

THE RULE WHICH GOVERNS WITH THE KINGDOM OF BELGIUM.

Article III. Naturalized citizens of either contracting parties, who shall have resided five years in the country which has naturalized them, cannot be held to the obligation of military service in their original country, or to incidental obligation resulting therefrom, in the event of their return to it, except in cases of desertion from organized and embodied military or naval service, or those that may be assimilated thereto by the laws of that country.

**THE RULE WHICH GOVERNS WITH THE REPUBLIC OF ECUADOR.**

**Article II.** If a naturalized citizen of either country shall renew his residence in that where he was born, without an intention of returning to that where he was naturalized, he shall be held to have reassumed the obligations of his original citizenship and to have renounced that which he had obtained by naturalization.

The rule which governs with Great Britain is general and has no restrictions.

**COMPARISON OF THESE RULES.**

The specification made in some of these rules and the omission to specify in other of the rules do not contradict the international common-law rule that when a criminal or an emigrant, who has failed to fulfill existing obligations to his government prior to his departure, returns to the country of his origin, he must perform them regardless of his citizenship. The international common law rule must govern, and is applicable in all cases where there has been a breach of law prior to the departure of the emigrant, to which application of the rule the government of the country, in which the emigrant has become a naturalized citizen, should not object upon explanation of the existing facts in the case.

**COMPARISON OF THESE RULES WITH THE RULES WHICH GOVERNED WITH THESE COUNTRIES PRIOR TO THE RATIFICATION OF THE TREATIES.**

The general rule was laid down by Attorney-General Black in 1859, as follows: "In regard to the protection of our citizens at home and abroad, we

have in the United States no law which divides them into classes or makes any difference whatever between them." 9 Op. Atty-Genls. 356.

In the early practice prior to the ratification of the treaties of naturalization, two classes of cases arose, the first, punishment for wrongs committed by the emigrant prior to his departure, and second, liability to perform military duty due and unperformed before departure.

Under the first class was the case of Henry D'Oench. He migrated from Prussia, became a naturalized citizen of the United States, returned to the country of his origin, and was there held as a fugitive from justice for reason of condemnation to a punishment for violation of the Prussian law previous to his departure. It was held that the change of national character subsequent to the alleged offense does not release an offender from penalties previously incurred when legally brought within the jurisdiction of the country whose laws have been violated. Mr. Marcy, secretary of state, November 16, 1853.

The same rule was maintained as to Austria. "An Austrian subject who commits an offense against Austrian laws, and then, after becoming a naturalized citizen of the United States returns voluntarily to Austria, cannot rightfully set up his citizenship in the United States as a bar to a prosecution in Austria for such an offense." Mr. Marcy, secretary of state, to Mr. Jackson, April 6, 1855.

In a case with the kingdom of Hanover, the following rule was laid down: "The liability of a citizen of the United States before the courts of Hanover,

cannot depend upon the question whether he is a native or naturalized citizen, but upon the question only whether he has committed any offense against Hanoverian law. Expatriation is no offense, and we cannot permit an unreasonable distinction to be made between different classes of our citizens." Mr. Cass, secretary of state, to Mr. Wright, December 9, 1859.

Under the second, the rule is laid down as to the duty to perform military service as follows: "The Prussian government requires of all its subjects a certain amount of military service. However onerous this may be, it is purely a matter of domestic policy in which no foreign government has a right to interfere," Mr. Everett to Mr. Barnard, January 14, 1853.

It is well known that most of the German states require of their subjects a certain amount of military service. If they emigrate before they perform it, and becoming naturalized abroad, return for any purpose to their native country, they are still liable to perform the service. Mr. Morey, February 17, 1857.

In order to entitle a naturalized citizen's original government to punish him for an offense, this must have been committed whilst he was a subject, and owed allegiance to that government. Mr. Cass, July 8, 1859.

European governments have maintained that the obligation to perform military service devolves on every subject as descendant from his parent, the fulfillment of which duty is in the future, and when the age is reached by the subject for the performance of the duty, the authorities make the demand on the subject. This demand once made holds the subject until he is

released therefrom, which may or may not happen, the power being discretionary in the government, and in individual cases it may or may not exercise the same. The cases are few in which the release is granted, and where property can be found in the country which may belong to the subject, or which may fall to the subject by the laws of inheritance, the same is sequestered and held by the government; or, in cases where none such is found, a fine is imposed by due process of law in favor of the government, which may be abated when the subject is found in the country, and the subject held for military duty or at times released wholly therefrom upon condition of his departing from the country. All of these proceedings are matters of domestic concern with which foreign governments have no rights of interference, and yet they have given rise to much discussion, all of which could have been avoided had the subject followed the rules by which his departure would have been sanctioned, which are to seek from his government upon application in the prescribed form a certificate of emigration.

The effect of the certificate of emigration is to legalize the departure and conditionally release the subject from the performance of military service. The release is not absolute, the practice being that an emigrant who, in good faith, departs from his native country, does so for the purpose of founding a home elsewhere, not to remain away temporarily, or to make use of the certificate solely for the purpose of avoiding military service, and with the belief that having so done and having clothed himself with a citizenship in some

other country, he can return and take up his residence in the country of his origin, and with impunity escape all obligations which devolve on his former fellow countrymen. The intention is, and it is the practice that such subjects, who apply for and obtain certificates of emigration, shall leave the country of their origin, and remain away unless return becomes necessary for some temporary purpose, but not for residence if continued for a longer period than for two years.

There is no duty to perform obligations which arise after emigration as between the United States and the countries with which the treaties of naturalization were made.

A person having served the required three years in the German army, and being placed on the reserve rolls, having emigrated in time of peace, when no existing obligation to perform military service existed, and having become naturalized in good faith after a residence of five years in the United States, and who, although temporarily in Germany, intends in good faith to return and reside in the United States, appears to be secured by the terms of the treaty from punishment for a failure to perform military service when the obligation arises after emigration. Mr. Fish, July 22, 1875.

This rule gives rise to a question which has not been fully decided as between the respective governments. A continuous obligation, one from which without permission a German subject could not be absolved, would practically bar the right of emigration in this, that upon return punishment would be visited upon such an emigrant. The military service is continuous up to the forty-fifth year, and the simple ser-

vice of three years is not a fulfilment of the duty, should the rule be enforced. To return temporarily would be to place the emigrant in the power of the government to enforce the rule. It is the fulfilment of all obligations which makes the departure secure, and the compliance with existing regulations, such as the obtaining of a certificate of emigration, is the legal method of departure.

The United States justly maintain that obligations cannot be such as cannot be absolved ; to this rule the German government has not fully subscribed, although great leniency has been shown in some cases.

The German policy is quite fully explained by the following: It is impossible for this department to say in advance what molestation naturalized American citizens of German birth may meet with from the authorities of Germany, by reason of questions arising as to their liability to military service there. In case of arrest, however, they may be assured of all proper protection from this government and its representatives. Mr. Blaine, April 7, 1881.

#### THE RIGHT TO PROTECTION OF CITIZENS OF THE UNITED STATES WHEN ABROAD.

The rule, as laid down by the statutes of the United States, draws no distinction between a citizen by descent and a citizen by naturalization. This rule is autonomous. The United States cannot legislate for other sovereign states. It can, however, declare to the world its principles of government, and the natural rights which are inherent in man all the world over. The exceptions, if they may be called such, which the United States has been forced to recognize, as to its

naturalized citizens upon return to the country of their origin, are not in fact exceptions.

In the United States the rule is, that all citizens when in foreign countries are entitled to its protection.

When its citizens go to foreign countries, they become subject to its laws, and are amenable to its courts of justice; while there the government of the United States will protect them against all undeserved indignities.

While in foreign countries, citizens of the United States may be called upon to perform duties to the governments of these countries.

A citizen of the United States who resides in a foreign country, and there has relations with the citizens of that country, and has interests which the municipal regulations guard and protect, may be called upon to protect those interests in conjunction with the citizens of that country, whose interests are likewise jeopardized.

In particular is this the case when the country is invaded by a foreign enemy. This duty is merely local. A citizen of the United States can only be called upon to defend his own interests and the interests of others, in the locality in which the interests lie.

He cannot be called upon to enter the army for the purpose of invading another country. Whatever he does in this regard, he does voluntarily. If he enters the army he cannot plead his citizenship, and ask the government of the United States to free him from the obligation which he has thus voluntarily assumed.



CITIZENS OF THE UNITED STATES MAY DIVEST THEMSELVES OF THEIR CITIZENSHIP AND ACQUIRE CITIZENSHIP IN A FOREIGN COUNTRY.

When a citizen of the United States surrenders his citizenship to the United States, by application to the government of a foreign country, and pursuant to the application is admitted to citizenship in that country, the act is his own voluntary act in the exercise of the right to withdraw from the society of the United States, a right which he reserved to himself when he became a citizen thereof.

THE LAW OF A FOREIGN STATE CANNOT IN ITSELF CHANGE THE CITIZENSHIP OF A CITIZEN OF THE UNITED STATES TEMPORARILY OR PERMANENTLY RESIDING THEREIN.

There is no rule of international law which takes away from a citizen the right to exercise his own free will, as to whether he will remain a citizen of the country from which he departed, or become a citizen of the country to which he migrates.

The republic of Venezuela passed a law that all persons visiting such state should be regarded as citizens thereof.

The rule was applied to citizens of the United States sojourning in Venezuela.

The United States took the ground that the position could not be maintained, and the rule was not applied. 9 Op. Atty-Genls. 356.

LONG RESIDENCE IN FOREIGN COUNTRIES BY CITIZENS OF THE UNITED STATES.

There is no rule of law which denies to citizens of the United States the right and privilege to reside in foreign countries. It is open to citizens to live in all

parts and portions of the world. There must remain, however, during the period of domicile abroad, some tie of continued relation to the government. This necessitates an investigation of each particular case when the citizen makes claim for protection. In a consideration of such cases, the rule must not be lost sight of, that the government of the United States cannot force other sovereign states or the particular sovereign state, in which the citizen of the United States who makes a claim for protection resides, to accept its citizens as citizens of the country in which the claimant for protection is domiciled. The government must proceed upon the presumption that the acts of the claimant were of his own intent, and if from such acts the government can properly infer that the claimant by his neglect of duties to the government of the United States is not entitled to the protection asked for, it may be denied him.

But this denial does not work a forfeiture of the claimant's citizenship as a citizen of the United States. It works as a punishment to him, for his failure to perform his duties to his country. It remains for him to return to the United States, and re-establish his relations to his government.

"Domicile in a country of voluntary asylum may suspend allegiance to the country of birth." *Caignet vs. Pettit*, 2 Dall. 234.

#### PAYMENT OF TAXES.

This is an important and a controlling element in many cases, which enters into a consideration of a claim to protection made by a citizen who has enjoyed a long residence in a foreign country. On this ground

protection may be denied him. The failure to contribute to the support of the government and to leave the burden on those citizens who remain within their country, certainly works an injustice to those with whom the compact was made to maintain and uphold the government by the resident abroad. To shirk this responsibility and then demand of those with whom he agreed to contribute his share towards the welfare of the government justifies those who remain in the United States in denying protection to such individuals who see fit to maintain and enjoy a domicile in a foreign state for a long period of time. Mr. Fish, secretary of state, to Mr. Hepburn, December 20, 1870.

A citizen of the United States who for thirty-eight years has resided in a foreign country, and has during that period in no wise contributed to the support or maintenance of his own government, cannot claim its diplomatic intervention in his behalf. Mr. Fish, secretary of state, to Mr. Niles, October 30, 1871.

When a citizen of the United States places himself within the jurisdiction of a foreign government and subjects himself and his property to its laws, and when such citizen afterwards seeks the interference of the United States to redress some wrong which he may have suffered at the hands of such foreign government, this government reserves to itself the right of determining not only on the merits of the particular claim but also on the claimant's right to protection. It is for this government to say whether the claim shall be presented or not to the foreign government. Mr. Frelinghuysen, secretary of state, to Mr. Lowell, February 27, 1884.

A case in point is that of Bagur—resided in the United States from 1852 to 1865, and in 1860 became a naturalized citizen. In 1865 he returned to Spain, taking his wife with him; his children were born there, and for twenty years he continued his residence in that country. The fact that he has never voted or held office in Spain, or taken part in any political demonstration there may show that he is not a zealous Spaniard, but does not prove him to have been a loyal citizen of the United States. It was held “while there is no allegation that he intended to return to the United States, the inference to the contrary is rendered very strong by his settlement in Spain as the place of his children’s birth and education, and by his failure even now to make any effort to return.” Moreover there is no evidence that he ever contributed by payment of taxes or otherwise to the support of this government. The facts furnish a presumption not rebutted that he has abandoned his nationality, involving his minor children in the same abandonment. Under these circumstances thus understood the legation will not accede to his request for a passport. Mr. Porter, acting secretary of state, to Mr. Curry, January 4, 1886.

#### THE REVENUE AND INCOME TAX.

A state has the right to levy a tax on its citizens resident abroad. The collection of such a tax is difficult. The authorities of the foreign state in which the citizens reside cannot be called upon to make the collections, nor is there any power to enforce them. This, however, does not prevent notice to such citizens residing abroad that such a tax is due and is to be

paid by them to the authorities of their country. Bluntschli Voelker Recht, § 376.

This levy of tax and its non-payment has been made an element of importance in the consideration of the question whether protection should be extended to such citizens residing abroad or not. F. R. of U. S., 1871, p. 888; Idem, 1875, pp. 1, 488, 449; Idem, 1875, pp. 1, 479.

If found under these rules that such a citizen residing abroad who demands protection has not paid the tax, it is questionable under the international common law rule, whether the protection can be denied such applicant. A state cannot pass and enforce a law on aliens making them citizens contrary to their will, when within the state, no more can a state declare its citizens to be aliens for reason of failure to pay an income tax when resident abroad. The rule is moral in effect, not absolute as a matter of law. In an emergency the protection should not be denied. For it must be borne in mind that, as the tax cannot be collected, yet there are citizens of other states within the United States paying taxes as the American citizen abroad is doing on property he may have there, and both governments are in the same predicament as to collection from its citizens abroad.

#### REBUTTAL TESTIMONY.

The investigation of the claim of protection as made by a citizen of the United States when abroad, gives to the claimant the right to rebut the evidence which may be furnished to the government on either the question of long continued domicile or non-payment of

taxes. Upon and after consideration of all the facts in the case it remains for the government of the United States to decide whether or not it will press the claim for protection, as the claimant demands protection. Mr. Frelinghuysen to Mr. Lowell, February 27, 1884. Mr. Fish to Mr. Washburn, June 28, 1873.

REFUSAL TO EXTEND PROTECTION DOES NOT INVOLVE  
LOSS OF CITIZENSHIP.

An applicant makes demand on his government for protection. For reason either of long continued absence from his country, for non-payment of taxes to his government, for non-payment of revenue or income tax to his government, or for some other reason, he is placed in a position to furnish rebuttal testimony on which the government to which application for protection is made may Pass in order to decide whether or not protection shall be extended to the applicant.

The strongest rule laid down is that by Attorney-General Black in 9 Op. Atty-Genls. 62: "There is no mode of renunciation by a citizen of his citizenship prescribed. But if he emigrates, carries his family and effects along with him, manifests a plain intention not to return, takes up his permanent residence abroad, and assumes the obligation of a subject to a foreign government this would imply a dissolution of his previous relations with the United States."

In other words there must be a perfect act of expatriation which includes not only emigration but also naturalization.

Nothing short of expatriation can work a loss of citizenship. 9 Op. Atty-Genls. 356.

Therefore, unless the citizen has assumed the obliga-

tion of a subject to a foreign government, he still remains an American citizen. It is the act of the citizen in the exercise of his volition, expressed pursuant to the prescriptions of the naturalization laws of the country in which he resides, by which the citizenship is abandoned. It is not the decree of the government by which protection is refused to the applicant, even if he is unable to satisfy his government by rebuttal testimony. For example, in Bagur's case, which seems to be the leading case, after a residence of twenty years in Spain it was held that he had abandoned his American citizenship. This ruling did not make him a Spanish subject. There is no rule of law in Spain by which it holds that the waifs of the United States become Spanish subjects because the United States deny to them passports. It works an inconvenience in the applicant and may have the effect to cause his return to the United States, but not as a Spanish subject, and necessitates his naturalization in the United States. No more does it work an abandonment of citizenship as to the children of Bagur born in Spain. They are children of a citizen of the United States born abroad, and remain such unless the parent changes his nationality during their minority, and this change does not deprive them of the right of election to remain citizens of the United States when they reach majority.

#### NATURALIZED CITIZENS.

The rule is somewhat different as to naturalized citizens upon return to the country of their origin. There are many ties notwithstanding their naturalization, which hold them to the country of their origin; these

may be business interests, family affection and relations of patriotism, any or all of which may enjoin upon them a return to the country of their origin from time to time, and for a temporary or permanent purpose.

It was early laid down as a rule, "that it can admit of no doubt that the naturalization laws of the United States contemplate the residence in the country of naturalized citizens, unless they shall go abroad in the public service or for temporary purposes."

**THE CASE OF LANDAN.** He was naturalized in the United States in 1854, he went to the Levant in 1857; he retired to Vienna in 1868, and during the whole of this period he was absent from the United States, and continued the same until 1886, when he demanded protection from the government of the United States.

It was held that Landan had evaded his duties of citizenship by his non-residence, and none of them had ever been performed by him. The protection was refused. Mr. Bayard to Mr. Lee, July 24, 1886.

**THE CASE OF CRANZ.** He was born in Hamburg, Germany, of Austrian parents; emigrated to the United States; was naturalized in 1882, left the United States in 1888, with no intention to return to the United States to reside; is now a resident of Belgium, and claims protection. It was held that he having no intention to return to this country to reside, and take upon himself the duties and obligations of a citizen of the United States, that protection must be denied him. Mr. Bayard to Mr. Tree, April 9, 1886.

"Voluntary expatriation by a naturalized citizen, which forfeits a right to diplomatic intervention, may be inferred from a long residence abroad in the place



of his birth, by non-payment of taxes and non-possession of property in this country, and by failure to express any intention to return." Mr. Frelinghuysen to Mr. Lowell, February 27, 1884.

**NATURALIZED CITIZENS UNDER THE TREATIES — THE RULES UNDER THE TREATIES.**

**WITH THE GRAND DUCHY OF HESSE-DARMSTADT.**

Article IV. If a Hessian, naturalized in America, but originally a citizen of the parts of the Grand Duchy not included in the North German confederation, renews his residence in those parts without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American, naturalized in the Grand Duchy of Hesse (within the above described parts), renews his residence in the United States without the intent to return to Hesse, he shall be held to have renounced his naturalization in the Grand Duchy.

The intent not to return may be held to exist, when the person naturalized in the one country resides more than two years in the other country.

**WITH THE KINGDOM OF WURTEMBERG.**

Article IV. If a Wurtemberger, naturalized in America, renews his residence in Wurtemberg without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American naturalized in Wurtemberg, renews his residence in the United States, without the intent to return to Wurtemberg, he shall be held to have renounced his naturalization in Wurtemberg. The intent not to return may be held to exist when

the person naturalized in the one country resides more than two years in the other country.

WITH THE GRAND DUCHY OF BADEN.

Article IV. The emigrant from the one state who, according to the first article, is to be held as a citizen of the other state, shall not on his return to his original country be constrained to resume his former citizenship; yet if he shall of his own accord re-acquire it and renounce the citizenship obtained by naturalization, such a renunciation is allowed, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country.

WITH THE NORTH GERMAN UNION.

Article IV. If a German naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American naturalized in North Germany renews his residence in the United States, without the intent to return to North Germany, he shall be held to have renounced his naturalization in North Germany.

The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

WITH THE KINGDOM OF BAVARIA.

Article IV. If a Bavarian, naturalized in America, renews his residence in Bavaria, without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally,

if an American, naturalized in Bavaria, renews his residence in the United States, without the intent to return to Bavaria, he shall be held to have renounced his naturalization in Bavaria.

The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

WITH NORWAY AND SWEDEN.

Article III. If a citizen of the one party, who has become a recognized citizen of the other party, takes up his abode once more in his original country and applies to be restored to his former citizenship, the government of the last-named country is authorized to receive him again as a citizen, on such conditions as the said government may think proper.

WITH THE KINGDOM OF DENMARK.

Article III. If, however, a citizen of the United States, naturalized in Denmark, shall renew his residence in the former country without the intent to return to that in which he was naturalized, he shall be held to have renounced his naturalization.

In like manner if a Dane, naturalized in the United States, shall renew his residence in Denmark without the intent to return to the former country, he shall be held to have renounced his naturalization in the United States.

The intent not to return may be held to exist when a person naturalized in the one country shall reside more than two years in the other country.

## WITH THE AUSTRO-HUNGARIAN MONARCHY.

Article IV. The emigrant from the one state, who, according to article 1, is to be held as a citizen of the other state, shall not, on his return to his original country, be constrained to resume his former citizenship, yet if he shall of his own accord re-acquire it, and renounce the citizenship obtained by naturalization, such a renunciation is allowable, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country.

## WITH THE KINGDOM OF BELGIUM.

Article IV. Citizens of the United States naturalized in Belgium shall be considered by Belgium as citizens of the United States when they shall have recovered their character as citizens of the United States according to the laws of the United States. Reciprocally, Belgians naturalized in the United States shall be considered as Belgians by the United States when they shall have recovered their character as Belgians according to the laws of Belgium.

## WITH THE REPUBLIC OF ECUADOR.

Article II. If a naturalized citizen of either country shall renew his residence in that where he was born, without an intention of returning to that where he was naturalized, he shall be held to have re-assumed the obligations of his original citizenship, and to have renounced that which he had obtained by naturalization.

Article III. A residence of more than two years in the native country of a naturalized citizen shall be construed as an intention on his part to stay there without returning to that where he was naturalized. This pre-

sumption, however, may be rebutted by evidence to the contrary.

#### COMPARISON OF THESE RULES.

The rules fall into three distinctive groups. The rule made with the North German Union, Hesse-Darmstadt, Wurtemberg, Bavaria, Denmark and Norway and Sweden is to the point, that the return of a naturalized citizen of the United States, who was a native of any of these states, to the country of his nativity without the intent to return to the United States, shall be construed as a renunciation of citizenship in the United States. The intent not to return may be held to exist when the person naturalized in the United States resides more than two years in the country of his birth.

The rule made with the Grand Duchy of Baden, Belgium, Austro-Hungarian monarchy and Great Britain is to the point that the return of a naturalized citizen of the United States to the country of his nativity shall not be construed as a renunciation of citizenship in the United States. The exercise of the citizen's own volition is essential to work a change of citizenship.

The rule made with the republic of Equador is to the point that the return of a naturalized citizen of the United States to the country of his nativity shall be presumed as a renunciation of citizenship in the United States after a residence of two years. This presumption, however, may be rebutted by evidence to the contrary.

Under these rules, naturalized citizens return to the country of their nativity respectively under different conditions.

These rules are reciprocal, and affect citizens of the United States who have become naturalized in these respective countries and being treaties are the supreme law of the land.

THE RULES AS THEY AFFECT CITIZENS OF THE UNITED STATES NATURALIZED IN THESE COUNTRIES UPON RETURN TO THE UNITED STATES.

Under the rule as laid down for the first group of states, the presumption is absolute. For example: A citizen of the United States becomes naturalized in the North German Union; after naturalization he remains in that country for a long period of time and then returns to the United States. After a two years' residence in the United States he may be presumed to have renounced his citizenship to the North German Union and be held as a citizen of the United States.

Under the rule as laid down for the second group of states there is no presumption. For example: A citizen of the United States becomes a naturalized citizen of Great Britain; after naturalization he remains in that country for a long period of time and then returns to the United States. No length of time for residence in the United States works a presumption of his renunciation of his English citizenship. In order to become a citizen of the United States he must comply with the naturalization laws precisely as though he had never been a citizen of the United States.

Under the rule as laid down for the third group of states a presumption is raised, but rebuttal evidence to the contrary can be offered against the presumption. For example: A citizen of the United States becomes

a citizen of the republic of Equador; after naturalization he remains in that country for a long period of time and then returns to the United States. After a two years' residence in the United States, he may be presumed to have renounced his citizenship to the republic of Equador; he cannot, however, be held as a citizen of the United States, until hearing had and rebuttal evidence is submitted by him to show that he has no intent of abandoning his citizenship to the republic of Equador.

The rule as laid down in the United States is to the point that "a native born citizen of the United States who has been naturalized in a foreign country and has become a citizen thereof is to be regarded as an alien, and in order to re-acquire his original nationality he must conform to the laws of the United States providing for the admission of aliens to citizenship." 14 Op. Atty.-Genls. 295.

There is no other construction to be placed upon the rule as agreed to with the first group of states. No provision is made by which the presumption can be rebutted, nor is it implied. To take away the right of expression of intent as to a change of citizenship finds neither precedent in the practice of the United States, nor is it in accord with the spirit of the laws as passed from time to time by the congress of the United States. Why this privilege should be denied is without reason. The rule carries within it a contradiction of the constitution and the laws; as a law of the land it is unconstitutional.

The rules which govern with the second and third groups of states are both constitutional. With the

second group, the rule is in accordance with the opinion above quoted. With the third group in case the presumption is raised, it can be met by evidence to the contrary. It does not deprive the returning naturalized citizen of the privilege to make his defense. If, therefore, he sees fit to change his citizenship, he must do so in accordance with the naturalization laws of the land.

Why there should be such a contradiction and such a lack of uniformity in these rules is inexplicable from the standpoint of the spirit of the jurisprudence of the country which governs these questions.

**THE RULES AS THEY AFFECT NATURALIZED CITIZENS OF  
THE UNITED STATES UPON RETURN TO THE COUNTRY  
OF ORIGIN.**

The rule which governs, and was agreed to with the first group of states by the government of the United States, should not admit of a dual construction, one for the convenience of the United States, and one for the convenience of any of the governments of the countries with which the treaties were made.

The treaty was ratified for two purposes: The first, on the part of the government of the United States to prevent abuses of the privileges of citizenship by naturalized citizens who sought to make it a convenience by which to avoid duties and obligations to the country of their origin, and to practically enforce the rule, "that the naturalization laws of the United States contemplate the residence in the country of naturalized citizens unless they shall go abroad in the public service or for temporary purposes."

The second, on the part of these governments referred to in the first group, to prevent the return of their



former subjects who sought citizenship in the United States and disavowed their allegiance to the countries of their origin for political reasons, thereby evading the continuing obligations which devolve upon their subjects who remain. These obligations were municipal regulations which were made for the protection and good of the country. If the obligations were obnoxious to some of the subjects and they departed for that reason, and became naturalized citizens of the United States, certainly it was proper for the government to stipulate the grounds on which they could return. For the reason that they had become naturalized citizens of the United States, to allow them by such an act to take up a permanent abode among the subjects with whom they formerly lived and evade obligations and duties and enjoy the immunities which work an injustice to a friendly government.. To prevent this after a residence for a fixed period a stipulation was made in accordance with their own views, and in contemplation of the rule expressed in the United States that the naturalized citizens of the United States were to remain within the United States and go abroad for temporary purposes only. By the treaty two years was considered sufficient sojourn for a temporary purpose.

#### THE WHEATON RULE.

In 1840, Mr. Wheaton, then United States minister at Berlin, commented on the case of Johann P. Knocke as follows: "I have received your application stating that you are a native born subject of his majesty, the king of Prussia; that you emigrated to the United States in the year 1834, being then twenty-one years

old, when you became naturalized as a citizen; that you have since returned to your native country where you have been required to perform military duty, and desiring my official interference for your relief.

"In reply I have to state that it is not in my power to interfere in the manner you desire. Had you remained in the United States, or visited any other foreign country except Prussia, on your lawful business, you would have been protected by the American authorities at home and abroad, in the enjoyment of all your rights and privileges as a naturalized citizen of the United States. But having returned to the country of your birth, your native domicile and natural character revert, so long as you remain in the Prussian dominions, and you are bound in all respects to obey the laws exactly as if you had never emigrated."

THE ERROR OF THE WHEATON RULE AS LAID DOWN AND  
FOLLOWED AS THE POLICY OF THE UNITED STATES WITH  
PRUSSIA.

The error of the Wheaton rule is found first, in the theory that the common law of England was accepted by the people of the United States, for structural use in the organization of their government; and second, in the belief that the principles of the feudal law governed in the organization of the form of government of Prussia.

The first has been sufficiently discussed heretofore.

The second is satisfactorily proved to be an error by consulting the constitution of the Germanic confederation of 1842, in which the admission of members of one state as members in another state is recognized; it is true that this may be considered in

one sense to be a local rule, somewhat similar to a municipal law for the confederation; yet it takes up the principle recognizing the right of a citizen to change his citizenship to that of another state. The principle of acquisition of citizenship by descent was likewise laid down in the same constitution. On the question of expatriation, a certificate of emigration was a prerequisite, which could not be granted to male citizens between the ages of seventeen and twenty-five unless they had a discharge from service in the army. During these years service in the army was held to be an existing obligation. While under the age of seventeen the obligation was prospective, and after the age of twenty-five the obligation was held to be continuing in its nature on general principles that the citizens should be ready on call to re-enter the army in case the country needed the services.

By the constitution of Prussia of 1850, article 1, it is declared "The right to emigrate cannot be restricted by the state except with respect to the duty of military service."

When Mr. Wheaton laid down the Wheaton rule as the law for subjects of Germany, naturalized in the United States, and Baron Manteuffel expressed the rule that the United States should inquire into the right of a German subject to emigrate before he was admitted to naturalization, the principles of the Code Napoleon recognizing the natural rights of man, was the common law in the Rhenish provinces, and in Westphalia, which constitute a large portion of the Prussian territory. The doctrine as laid down by Mr. Wheaton was anticipated as being that of Prussia,

which at that time had no fixed foreign policy, except that as had always been known to the international law of Europe, that only existing obligations at the date of emigration could be enforced, if not fulfilled before the departure of the emigrant. Prussia took advantage of this anticipation of Mr. Wheaton, and in the case of Knocke it so happened that the Prussian government was in a position to do so, owing to the age of Knocke when he departed, as being between the ages of seventeen and twenty-five; Knocke being twenty-one, when the obligation is recognized to be neither prospective, nor continuing, but existing. The right of Prussia to hold Knocke was undisputed; it did not, however, warrant Mr. Wheaton to declare the rule which he did, as being the law of the United States.

There was still another principle which would seem to have influenced Mr. Wheaton when he laid down the rule which has been cited.

At that time the judicial opinions in the United States proceeded upon a false presumption that the common law of England had a structural influence on the government of the United States. Very few cases had arisen in which aliens naturalized in the United States, returned to their original countries, and the dicta in these opinions were of great moment to him in his consideration of the subject.

Others who followed in the same line of thought found a further reason in the principle advocated in England in regard to the extent to which protection should be extended to naturalized citizens. By statute passed in 1851, the English government extended

no protection to its naturalized subjects when in their original countries; when there the statute implies, as is laid down in the Wheaton rule "having returned to the country of birth, native domicile and natural character revert," and this rule was followed by Mr. Wheaton's successors as the rule which should govern Prussians naturalized in the United States upon return to Prussia. Why this rule was not applied to other countries in similar cases can only be solved by defective diplomacy. And yet this rule became so forcibly impressed on the government of the United States that it passed in 1886 a statute affording equal protection to all citizens of the United States when abroad. For what reason? may properly be asked. It could only have been intended as a declaration against the German states, with which states a treaty was in force, which furnished a legal method by which to upset its practical effect.

#### THE BARNARD RULE.

In 1851, Mr. Barnard commented on the case of H. V. de Sandt, as follows: "The facts being that Sandt was born in Prussia; had emigrated to the United States; had there declared his intent to become a citizen; and then returned to Prussia.

"When you ceased to be a citizen of Prussia by your permit of emigration, and became a resident in the United States, the laws and government of that country became your protection as long as that residence continued. When, however, you quitted your residence there, before perfecting your naturalization, and again took up your abode in Prussia for your own

purposes, your position was a peculiar one and required from you a peculiar and very discreet line of conduct. It was impossible for the American legation here to claim you as an American citizen."

In 1852, Mr. Barnard commented on the case of Dr. Gutowski, as follows, the facts being that he was born in Prussia, naturalized in the United States and returned to Prussia: "Having voluntarily returned to the country of your birth where you have purchased a farm and taken up your residence, the Prussian government has a right to regard you as its subject and so treat you in all respects."

In the case of B. Meyer, the facts were as follows: Meyer was born in Prussia; emigrated to the United States; became a naturalized citizen; returned to Prussia; was arrested for non-fulfillment of military duty and fined, without the intervention of the government of the United States.

In 1852, Mr. Barnard received instructions from Mr. Everett, secretary of state, in the case of Johann Josef Ranke, on the following facts: Born in Prussia; emigrated without permission; naturalized in the United States; returned to Prussia, and was sentenced to a service of three years in the Prussian army.

"That lying under a legal obligation in Prussia to perform a certain amount of military service, he leaves his native land and without performing that duty or obtaining the prescribed certificate of emigration, comes to the United States, and is naturalized, and afterward for any purpose whatever, goes back to Prussia, it is not competent for the United States to protect him from the operation of the Prussian law."

At this time these cases were of common occurrence. Citizens of the United States were fined, imprisoned, and sent from the country, and Baron Manteuffel defines the Prussian position as follows: "As, however, the government of the United States considers that it is not for its interest to make the admission of an emigrant as citizen dependent on the exhibition of a document proving that the ties by which he was attached to his old country are dissolved, it is much to be feared that difficulties will still occasionally arise."

#### THE WRIGHT RULE.

In 1858, Mr. Wright, United States minister at Berlin wrote as follows on this question: "No American consul or minister can shield from impressment a United States citizen, born in Prussia. Is it possible there is no remedy for this state of things? My opinion is, that if a decided and firm stand be taken by our government during the present peculiar condition of affairs in Prussia, it will lead to good results. It is certainly worthy of a trial."

#### THE QUESTION FURTHER CONSIDERED.

During the civil war in the United States many cases arose, which did not receive any attention from the government of the United States.

In 1865, the question was again agitated and continued in discussion until 1868, when the naturalization treaties were ratified.

Under these rules, which governed prior to the date of these treaties, the rule of construction by inference must be, that no expression of intent to return was intended and that the acts of the naturalized citizen in

the country of his origin were to be construed against him; that he renounced his citizenship in the United States by a two years' residence in the country of his origin.

Subsequent to the ratification of these treaties the presumption continued to be made in these cases and they were determined by the authorities without giving a hearing to the naturalized citizens of the United States. Continuous discussions of cases followed between the two governments.

In the year 1875 the German government made the announcement that hereafter naturalized Germans, who had resided in Germany more than two years shall not be forced into the army immediately upon the expiration of that time, but shall first be offered an opportunity to return to the United States.

Mr. Fish to Mr. Davis, November 5, 1875, then communicated the views of the United States: "The announcement is carefully worded and seems intended to remove the difficulty which has existed. If the course indicated be fairly pursued, and naturalized citizens resident in Germany are notified of the intentions of the authorities, and are allowed to depart prior to any attempt to force them into service, it will, as is hoped, remove an objectionable feature in the working of the treaty and not compel you to discuss cases where an adverse decision has practically been already pronounced by the authorities."

Notwithstanding this announcement, no rule of construction has been agreed upon as between the countries, and the interpretation remains substantially the same.



The rule which was made and agreed to between the United States and the second group of states has been free from questions, and rights and privileges of the respective citizens have been recognized in the respective countries.

The rule which was made and agreed to between the United States and the third group of states, has also been free from questions, and the status of naturalized citizens in the respective countries been recognized and their rights and privileges defined.

#### EFFECT OF TREATY LIMITATIONS.

Qualifications imposed by treaty become, when such treaty is duly solemnized and ratified, part of our naturalization system.

Consequently, the effect of the naturalization treaties between the United States and other countries was a modification of the naturalization laws of the United States, so far as the relations were concerned, which were entered into between the United States and those countries.

#### THE PRACTICE UNDER THE NATURALIZATION TREATIES.

Each case must depend entirely upon the circumstances of the same, is the position taken by both the United States and Germany. F. R. of U. S., 1874, p. 455.

The act of the Secretary of State is the act of the President of the United States except in such cases as the law may especially provide. The responsibility is on the Executive. *Marbury vs. Madison*, 1 Cranch, 137-170; *Parker vs. United States*, 1 Peters, 293; *Wilcox vs. Jackson*, 13 Peters, 498; *United States v. Elia-*

son, 16 Peters, 291; United States vs. Freeman, 3 Howard, 556.

THE CASE OF MENTHEIM COHN.

Born in Hatow, Germany. He emigrated to the United States in 1864, where he became a citizen by naturalization. Returned to Germany in 1872, where he married and settled down in January, 1872. It was held by the German government that article IV of the treaty of 1868 applied to his case, and he was summoned to perform military service without regard to his naturalization in the United States.

The government of the United States issued to him a passport upon his application, and the case was not pressed. F. R. of U. S., 1874, p. 447.

THE CASE OF EDWARD GRUBEL.

Born in Prussia. At the age of seventeen years, and prior to having been called to perform military service, he emigrated to the United States, where he became naturalized and resided seven years. On Christmas, 1874, he returned to his former home in Prussia, and on January 5, 1875, he was fined one hundred and fifty reichsmarks. He pleaded his American citizenship and exhibited his passport. It was held by the court that he was liable to a fine irrespective of his citizenship, and in default, was committed to jail.

The government of the United States put the question: "Whether the unallowed emigration of a person of an age liable to military duty is of itself an offense by the law of Germany, or whether the issue of a notice to perform military duty is requisite to constitute the offense." It was answered as follows: That

every German subject is by law required to be ready to perform military duty upon reaching the requisite age, and that no notice is necessary in order to entail liability to do the duty or to warrant a fine for neglect to perform it. F. R. of U. S., 1875, pp. 489, 533, 534, 535.

THE CASE OF JACOB AND HERMAN CASTELLAN.

Born in Posen. Both obtained discharges from the German government, the one February 20, 1866, the other May 6, 1867. The one left for the United States in 1866, the other in 1867. Both became naturalized citizens of the United States, the one January 11, 1871, the other February 13, 1871, and during the year 1871 both returned to Posen and settled there. The question was whether they were entitled to protection. It was held that under the circumstances, certificates of naturalization valid on their face and founded on the decree of a competent court cannot be questioned except through judicial proceedings instituted for that purpose or in which the correctness of the facts formerly passed upon may properly be adjudicated. F. R. of U. S., 1875, p. 579.

In both of these cases fraud was apparent. Herman Castellan received his discharge from the German government May 6, 1867, and was naturalized February 13, 1871. Certainly he had not resided uninterruptedly for five years in the United States as the statute required. He had in this respect failed to comply with the law. He could not have honestly satisfied the court that he had done so. No more so could Jacob Castellan, who received his discharge February 20, 1866, and was naturalized January 11, 1871.

Notwithstanding this, the power of the authorities was underrated, when the department of state decided, "if the political department of the government may from time to time pass upon such questions according to the apparent credibility of the particular evidence offered to impeach the decree, or the varying statements of an interested party, no uniformity of decision or security for acquired rights could exist." F. R. of U. S., p. 579.

The inquiry as to the discharges was instituted by the local authorities of Germany and were brought to the knowledge of the government of the United States. They were sufficiently authentic to permit the department to decide the question. Mr. Frelinghuysen to Mr. Hamlin, Sept. 22, 1882. Mr. Fish to Mr. Moran, Feb. 16, 1877. Mr. Blaine to Mr. Hamlin, Dec. 6, 1881. Mr. Bayard to Mr. Francis, May 20, 1885.

#### CASE OF LEO GRAFFENBERG.

Born in Germany. He emigrated to America in 1867, when seventeen years old; resided there more than five years; was naturalized in August, 1873; returned to Germany in 1874; he was notified that he had been fined during his absence for evasion of military duty. Upon investigation the fine was remitted by the German government because of ignorance of the fact that he had become an American citizen. F. R. of U. S., 1875, p. 569.

#### CASE OF ROBERT GEWECKE.

Born in Germany. He emigrated to the United States when eighteen years of age, without permission

in January, 1869; in 1874, he was naturalized, and in 1874 returned to Germany where he was notified that he had been fined for unallowed emigration. Upon investigation the fine was remitted. F. R. of U. S., 1875, p. 569.

CASE OF FREDERICK A. ARNDT.

Was born in Germany in 1835. In 1855, he presented himself for enrollment, and being a sailor was enrolled in the navy to serve until his thirty-ninth year. From 1855 to 1868, he served by permission on merchant vessels. In 1868, he took up his residence in New York; remained there over five years and was naturalized. He returned subsequently to Germany, and entered business. He was fined and sentenced to six years' service in the navy for unauthorized emigration and for not responding to the call in 1870. Upon request made by the government of the United States, the fine was remitted and the sentence reversed. Arndt had not resided two years in Germany when arrested. F. R. of U. S., 1875, p. 569.

CASE OF HENRY MUMBOUR.

Born in Germany. He served three years in the Prussian army, was then placed in the reserve and obtained a leave of absence for one year. In April, 1869, he went to the United States. While there the reserves were called out in the war against France. He received his call while in the United States, and decided to remain there and to become naturalized. In 1874, he returned to Germany. He was arrested and sentenced to imprisonment for one year for desertion. The government interceded in his behalf to which the

German authorities replied that he was residing in Germany without intent to return to the United States, as he admitted on examination; therefore, under the treaty he had renounced his American citizenship. They declined to remit the sentence. F. R. of U. S. 1875, p. 569.

CASE OF JACOB WHICK.

Born in Germany. He was summoned in 1869 to do military duty. Instead of responding, he emigrated to the United States where he resided five years and became a citizen. During his absence a fine was levied on his estate. On his return he was arrested for desertion. Pending examination he fled to Switzerland. The government of the United States interceded in his behalf to which reply was made that he had been adjudged to be a deserter and that sentence would be enforced should he come within the jurisdiction. F. R. of U. S., 1875, p. 570.

CASE OF THEODORE VOPEL.

Born in Germany. After service in the army for three years and in the reserve for three months, he emigrated to the United States where he became a naturalized citizen. He returned to Germany in 1874 where he was fined for illegal emigration. Upon investigation the fine was remitted. F. R. of U. S., 1875, p. 570.

CASE OF CHARLES H. A. GERDING.

Born in Germany. He emigrated to the United States when twenty years of age, remained there five years and two months, where he became naturalized. He

returned to Germany to sell out some property and then returned to the United States. He was arrested and forced into the army. Upon investigation he was released on condition that he returned to the United States. F. R. of U. S., 1875, p. 570.

CASE OF PHILIP HUMBERT.

Born in Germany in 1840. Served one year in the Prussian army; emigrated to the United States in 1868; was there naturalized and returned to Germany in 1874. He was notified upon return that he had been fined for non-performance of military duty. He stated in defense that he was a doctor of medicine and had returned to Germany "to live for a longer or shorter time and to practice his profession." The authorities of the United States replied that "such language implied residence in Germany without intent to return to America." He paid the fine to the German government. F. R. of U. S., 1875, p. 570.

CASE OF LOUIS WOHLGEMUTH.

Born in Germany. He emigrated to the United States when eighteen years of age, and there became a citizen by naturalization. He returned to Germany and was notified that he had been fined for non-performance of military duty. Upon investigation it was found that the fine had been paid by his father and it was ordered that it be remitted to him. F. R. of U. S., 1875, p. 571.

CASE OF MARTIN BECKMAN.

Emigrated to the United States when nineteen years of age; became a naturalized citizen and land-owner in Nebraska; returned to visit his father in Kiehl and

was forced into the German army. Upon investigation he was released. F. R. of U. S., 1875, p. 571.

CASE OF MAURICE A. NEWMARCH.

He was a native of Prussia; resided more than five years in the United States and became a citizen by naturalization. He returned to Germany and was notified to pay a fine which had been imposed in his absence because of non-performance of military service. Upon investigation it was found that the fine had been paid by his father; the German authorities refused to remit it on the ground that it had been paid without protest and because five years' residence in the United States had not been satisfactorily proved. F. R. of U. S., 1875, p. 571.

CASE OF CHARLES S. ROSENTHAL.

Born in Prussia, March 13, 1847. He went to the United States in July, 1865; was naturalized November 16, 1869. He invoked the intervention of the authorities of the United States for remission of fine imposed for non-performance of military duty. This was refused by the German authorities on the ground that his naturalization was improperly obtained, he not having resided five years in the United States and had not served in the army of the United States.

The German authorities would not accept as final a decree of a court of competent jurisdiction in the United States which had conferred on Rosenthal the rights of citizenship. They inspected the record and investigated the facts, and finding that the treaty had not been complied with, retained him as a German subject. The political authorities of the United States



in the case of the brothers Castillan would not go behind the record, yet the same authorities in Germany deemed it their duty and right to do so in order to prevent imposition. Had they done so in the case of the brothers Castillan, they would have reached the same conclusion as in the case of Rosenthal. F. R. of U. S., 1875, p. 572.

**CASE OF C. F. H. JANTZEN.**

A native of Mecklenburg. Emigrated in 1868 to the United States; was naturalized in 1875, when he returned to Germany. He was forced into the German army; on proof of his American citizenship he was released. F. R. of U. S., 1875, p. 572.

**CASE OF HILAR FRESH.**

Born in Germany. He emigrated to the United States, became naturalized and returned to Wurtemberg, where he resided nearly two years. He inquired for information concerning his rights, having been notified that a residence of two years would be held to be a renunciation of his American citizenship. The legislation of the United States notified him that after the expiration of two years, it would be much more difficult to protect him, and counseled him to go to America.

This was in direct contradiction of the treaty with Wurtemberg, article IV, which is "the emigrant from the one state who, according to the first article, is to be held as a citizen of the other state, shall not on his return to his original country be constrained to resume his former citizenship, yet if he shall of his own accord re-acquire it and renounce the citizenship acquired by naturalization, such a renunciation is allowed, and no

fixed period of residence shall be required for recovery of citizenship in his original country. F. R. of U. S., 1875, p. 572.

CASE OF ANDREAS FREDERICK BAAB.

Born in Germany. He emigrated to the United States, resided there five years and became a citizen by naturalization. He returned to Germany where, after a residence of nearly two years, he was notified that he must leave Germany after the expiration of two years or enter the army. He went to the United States where he remained for a few weeks and returned to Germany; he was at once put into the army. The legation of the United States intervened in his behalf; the German authorities refused to release him. F. R. of U. S., 1877, p. 246.

CASE OF MARCUS HIRSCH.

Born in Germany. He emigrated to the United States where he was naturalized. He subsequently returned to Germany. He was asked by the German authorities whether he intended to return to America, and declined to answer. The same inquiry was made by the American authorities, to which the same answer was given; a passport was denied him. F. R. of U. S., 1877, p. 248.

CASE OF DEIDRICH JACOBSON.

Born in Germany. He emigrated to the United States in 1871, was naturalized in 1876, and returned to Germany in the same year. He took up his residence there and had no purpose of returning to the United States. Upon application for passport his citizen papers were retained by the legation in Berlin, and the course

was approved by the authorities at Washington. F. R. of U. S., 1877, p. 248.

CASE OF E. F. KLOSS.

A native of Prussia. Emigrated to the United States, arriving there November 11, 1870; was naturalized November 1, 1875, after a residence of less than five years. Returning to Prussia, he was fined for emigration without permission, and after paying the fine sought the intervention of the United States, which was denied him. F. R. of U. S., 1877, p. 249.

The German authorities should have investigated this case as fully as was done in the case of Charles S. Rosenthal. It would appear that the authorities of the United States did so notwithstanding the ruling laid down in the case of the brothers Castillan.

CASE OF GUSTAVE KRIEGAL.

Born in Prussia. Emigrated to the United States in 1870 when fifteen and one-half years old; returned to Prussia in 1874; re-emigrated the same year with a German passport authorizing him to go abroad temporarily subject to liability to return to perform military duty; was naturalized October 19, 1876; he returned immediately thereafter to Germany, and was ordered to be enrolled. The authorities of the United States refused to interfere. F. R. of U. S., 1877, p. 249.

CASE OF CHARLES LEVINSON.

Born in Germany. Emigrated to the United States, then returned to Germany. He applied for a new passport from the legation at Berlin, producing a certificate of naturalization and an old passport. Upon

investigation, it was shown that he left Germany too late to have had a five years' residence in the United States. The papers were retained and passport refused. F. R. of U. S., 1877, p. 249.

The investigation by the authorities was correct. The claim to citizenship should only be allowed upon the clearest evidence and when it is discovered in the examination of the case that the certificate of citizenship has been fraudulently obtained, it is right to refuse to surrender such papers to an applicant for protection who has practiced deceit and thereafter seeks to impose on the government of the United States and his own native government.

CASE OF EDWARD MAMMELSDORF.

Born in Germany. He emigrated to the United States in 1867; resided there five and one-half years; was naturalized; resumed his residence in Germany in 1872. In 1875 he received a passport. In 1877 he applied for a new passport, having lost the one given him in 1872. The legation of the United States at Berlin decided that the facts tended to raise a presumption that Mammelsdorf had sought naturalization in order to avoid military duty in Germany, and that it would not consider his application for a new passport until the expiration of two years from the issue of the old passport.

The German authorities had not raised any question as to his citizenship. F. R. of U. S., 1877, p. 250.

CASE OF WALDE SALAMONZKE.

Born in Germany. Emigrated to the United States and there received a certificate of naturalization. Upon

application for protection on return to Germany, it was discovered that he had not resided in the United States for five years, and no protection was extended to him. The German authorities had not claimed or raised any question as to him. F. R. of U. S., 1877, p. 251.

CASE OF JOHN SOOLA.

A native of Hesse-Darmstadt. Born in 1850; obtained a discharge from his German nationality and emigrated in his seventeenth year; was naturalized November 14, 1873. He returned and resumed his residence in Hesse, in August, 1876; he was ordered by the German government to return to the United States or enter the army. The authorities of the United States refused to interfere in his case on the ground "there was no good reason to take it out of the operation of the treaty." See article IV, treaty with Hesse-Darmstadt. F. R. of U. S., 1877, p. 251.

CASE OF GOTTLIEB VILLINGER.

Born in Germany. He emigrated to the United States and arrived in lower bay of New York on the evening of the 2d of September, 1869; landed on the morning of the 3d; was naturalized September 2, 1874; returned to Germany September 4, 1874, where, upon arrival, he went into business. He applied for a passport, which was refused; evidence being produced against him that he did not intend to return to the United States. F. R. of U. S., 1877, p. 252.

CASE OF JULIUS BAUMER.

Born in Prussia. When he reached the age of twenty years, he obtained from his government a

formal permission in writing to emigrate. He came to the United States, and on the 6th of November, 1876, became a naturalized citizen of the United States. In the year 1877 he returned to Prussia with the intent to remain about six months. After his arrival he was notified by the local authorities, that he must either perform military service or submit to banishment. He appealed from this notice to the higher authorities who gave to him the alternative, to leave the country within eight days or enter the army. He thereupon left the country.

It was held by the authorities of the United States that such proceedings were unwarranted and illegal; that he was a citizen of the United States, and as such was entitled to the protection of the government. Upon this finding he should have returned to Germany. F. R. of U. S., 1878, pp. 210-228.

CASE OF CHARLES GANZENMULLER.

Born in the grand duchy of Baden in 1851. He emigrated to the United States with permission of the Baden authorities, and became a naturalized citizen of the United States in 1875. In the same year, he returned to Baden, to care for an aged and decrepit father. He was immediately ordered by the local authorities to leave Baden or become a citizen of the grand duchy subject to military duty. The reason for this was, because his exemption from military service for reason of his American citizenship was a bad example to other young men. And this was brought within the local law of the grand duchy, enacted May 5, 1870, that "the grand ducal minister of the interior

may at any time decree the expulsion of such foreigners as endanger the internal and external safety of the state."

The imperial government refused to annul the decree of expulsion.

Ganzenmuller left the country disgusted, because protection was not afforded him. This he should have had.

The treaty with the United States was made in 1868 — of which article fourth is as follows: "The emigrant from the one state who, according to the first article, is to be held as a citizen of the other state, shall not, on his return to his original country be constrained to resume his former citizenship."

Under this rule he was to be recognized as an American citizen, and under the first article of the same treaty "shall be treated as such," upon return to Baden.

The law passed by the Baden authorities was in 1870, two years later than the treaty. Its application to the case of Ganzenmuller and the reason for its application is in derogation of the treaty in its import and meaning.

"A treaty is a general rule of law for the contracting parties. *Pactum instar legis.*" Bluntschli Voelker Recht, § 402.

The treaty was the law for both the United States and the grand duchy of Baden. The municipal rule, as passed by Baden in 1870, was in conflict, and one of which the government of the United States had no official notice that its purpose was to change the intent of the treaty of 1868, nor would such notice have

availed, the treaty for 1868 having been made for a term of ten years from its date.

The position taken by Baden was not tenable. If the recognition of Ganzenmuller as an American citizen as such under the treaty did not apply to him in Baden, then the treaty was valueless. There was no two-year rule as in other German treaties made at the same time. F. R. of U. S., 1878, p. 216.

CASE OF MARTIN ZIMMER.

A native of Hesse-Darmstadt. Emigrated to the United States October, 1868, at the age of fourteen, with written permission from the authorities; was naturalized in 1877; returned to Germany the same year, to visit his parents; was arrested and forcibly enrolled in the army as an "unsafe person liable to military service." During his absence in America he had been sentenced to pay a fine for evasion of military service. Request was made that Zimmer be released from the army, which was granted by the German authorities. F. R. of U. S., 1879, p. 368.

CASE OF ERNEST EGGERS.

Born in Hanover in 1846. Emigrated to the United States in 1867; declared his intention to become a citizen of the United States in 1868, and was naturalized in 1878. While in the United States, and after naturalization, he complained that his property in Germany had been attached for evasion of military service; the authorities of the United States intervened in his behalf and received report that the attachment had expired by reason of limitation. F. R. of U. S., 1879, p. 369.



Although the attachment may have expired for reason of limitation it does not follow but that new proceedings could have been begun against his person, upon return to Germany.

CASE OF FRANK KLAGGES.

Born in Westphalia in 1857. Emigrated to the United States in November, 1864, and was naturalized about ten years later. In 1875, he returned on a visit to Germany, and was informed in 1878 that he must become a German citizen within four weeks or return to the United States. The legation of the United States took the position, as Klagges had exceeded the two years' visit allowed by the treaty, the legation could only ask as a favor of the German government that he might be allowed to remain longer than four weeks, for reason of his wife's illness; the favor was granted by the German government. It is to be noticed in this case that Klagges was thirty-eight years of age upon return; too old for military service; he had not been fined, nor was he held for any unfulfilled obligations.

He had simply resided in Germany more than two years and was ordered to return to the United States or become a German subject. In concurring with this action of Germany the authorities of the United States accepted the German version of article IV of the treaty and asserted no rights in his behalf. For eleven years he had been resident in the United States. His position was a most unenviable one. Contrary to his will he must surrender his American citizenship or return to the United States to preserve it. He concluded to remain in Germany. F. R. of U. S., 1879, p. 369.

## CASE OF JOHN GOTTFRIED BERUDE.

Born in Prussia in 1849. Emigrated to America in 1870 ; was naturalized in 1877 and in 1878 returned to Germany, to visit his father with intent to return to the United States within two months to take command of a ship. He was imprisoned for non-payment of a fine imposed in his absence for neglect to perform military service. Upon petition the fine was remitted with the emperor's pardon from imprisonment, the return to the United States being the reason therefor. F. R. of U. S., 1879, p. 371.

## CASE OF CHRISTIAN HENKES.

Born in Prussia. Emigrated to the United States at the age of sixteen ; was naturalized in 1875 ; was fined for non-performance of military duty. He petitioned while in the United States for remission of the fine, which his father had paid. The petition was granted. F. R. of U. S., 1879, p. 371.

## CASE OF ALEXANDER F. WALLNER.

Born in Russia of German parents, in 1848. He emigrated to the United States in 1871 ; was naturalized in 1877 ; returned immediately to Germany where he had been fined for non-performance of military duty. Upon application the fine was remitted. F. R. of U. S., 1879, p. 371.

## CASE OF C. R. MULLER.

A naturalized American citizen returned to Germany in 1876, at the age of twenty-eight years and remained until 1880 in business. His visit having exceeded the two years allowed by treaty, he was ordered

to leave the country within eight days. He petitioned for more time, and at the request of the American authorities he was granted three months, to return at the expiration of that time. F. R. of U. S., 1881, p. 476.

CASE OF JOHN C. HAGEDORN.

Born in Wendel, Schleswig-Holstein in 1852. Emigrated in 1868 to the United States, where he was naturalized in 1880. He returned on a visit to Germany, and was informed that he had been fined for non-performance of military duty. He petitioned that the fine be remitted upon his return to the United States. This was granted by the German authorities. F. R. of U. S., 1881, p. 476.

CASE OF WILLIAM BRINK.

Was born March 9th, 1858, in Prussia. In 1872, he emigrated with his mother to the United States, to join his father who had emigrated in 1871, and was naturalized in 1876. In 1881 the father and son returned to Germany for a few weeks; the son was arrested, and enrolled in the army. Upon petition, was released; he was then fined; upon petition for remission of the fine it was returned, the father and son returning to the United States. F. R. of U. S. 1882, p. 187.

CASE OF GEORGE E. R. BOETCHER.

Born in Germany in 1851. Emigrated to the United States in 1871; was naturalized in 1878, after which he became an officer in the American merchant marine. With his vessel he arrived in Bremerhafen; went on a visit to his parents, was arrested and fined. Upon petition he was released and fine remitted, upon proof

of his citizenship and intent to leave the country. F. R. of U. S., 1882, p. 188.

CASE OF EDWARD CORDES.

Born in Hamburg, Germany, in 1853. He emigrated to the United States in 1872, where he was naturalized in 1878. He returned soon after to Germany, where he resided for a period of time exceeding two years. The German authorities arrested him, and enrolled him in the army for service. The evidence of intent to return was unsatisfactory, and the legation would not intervene in his behalf, "he having actually resided more than the two years allowed by treaty, was consequently liable to be considered by the German government to have forfeited his American nationality.

Cordes was discharged, and returned to the United States. Under this ruling, it would seem that question of intent to return to the United States is not open for expression, after two years' residence. After that time, one is liable to be considered by the German government to have renounced his American nationality. F. R. of U. S., 1882, p. 188.

CASE OF BERTRAND HORSTMANN.

Born in Germany in 1851. He emigrated to the United States in 1872, where he was naturalized in 1881, and returned to Germany in 1882. He was arrested as a deserter, and claimed the protection of the government of the United States. It was held by the German government, that in accordance with the terms of the treaty of 1868, he was a deserter, and was, therefore, sentenced to a fine and imprisonment, in which decision the United States acquiesced. F. R. of U. S., 1882, p. 190.

## CASE OF GEORGE E. DE LA ROI

Born in 1856. Emigrated at the age of sixteen to the United States, and was naturalized in 1878. While in the United States he received notice that he had been fined for non-fulfillment of military duty, and in case of non-payment, would be imprisoned. Upon petition, setting forth his American citizenship, which upon examination by the German authorities was found to be in legal form, the fine was remitted. F. R. of U. S., 1884, p. 208.

## CASE OF GUSTAVE HELD.

Born in Prussia. He emigrated at the age of twenty-three, and was naturalized in 1883. Before emigration, he had served two years in the army, and been honorably discharged. He returned to Germany, and there ordered to appear in court, and was fined. Upon petition and hearing in the case, in which his American citizenship was established, as also his performance of military duty to Germany, it was held that the fine be remitted. F. R. of U. S., 1884, p. 209.

Law of June 1, 1870, concerning the loss and acquisition of nationality in the North German confederation, and in the various states thereof.

Section 13. Nationality can be lost henceforth in the following ways only :

- (1) By discharge upon application therefor.
- (2) By decree of the public authority.
- (3) By a residence of ten years abroad.
- (4) In the case of illegitimate children, the father having another allegiance than that of the mother by legitimation effected pursuant to the provision of law.
- (5) In the case of a North German, by marriage

with a person having allegiance in another state of the confederation or with a foreigner.

Section 21. North Germans who leave the territory of the confederation and sojourn during a period of ten years uninterruptedly abroad, lose thereby their state nationality. The above-designated period is reckoned from the time of the departure from the territory of the confederation; or, if the person leaving is in possession of a passport or home certificate from the time of the expiration of this paper. It is interrupted by an entry on the files of a consulate of the confederation. Its course recommences with the day following the cancellation of the entry on these files.

For North Germans who sojourn in a foreign state for at least five years uninterruptedly, and at the same time acquire nationality there the period of ten years may be reduced to one of five, whether or not the persons concerned are in possession of a passport or home certificate.

This law was made applicable to Alsace-Lorraine by law of January 8, 1873.

WITH ALSACE-LORRAINE PROVINCES OF FRANCE, UNTIL 1870, THEN ANNEXED TO GERMANY.

CASE OF AUGUST MELT.

Born in Lorraine in 1836. Went to the United States in 1852; naturalized in 1853; returned to Lorraine in 1861; bringing with him his son, born in the United States; where he continuously resided, until 1877, when he complained that the German government had called on his son to perform military duty, on the ground that his father's long residence in his

native place had worked a renunciation of his naturalization. The authorities of the United States refused to interfere. F R. of U. S., 1877, p. 250.

It was not until 1871 that Alsace-Lorraine was annexed to Germany; at the time of the annexation Mely was a citizen of the United States, residing in the country of his nativity, which was France. By the law of that country he had lost his quality as a French citizen, by his act of naturalization in the United States, and was there regarded as a citizen of the United States. Code Civile, § 17.

By the treaty of May 10, 1871, between the German empire and France, the right of option was given to the inhabitants of the provinces of Alsace and Lorraine to remain citizens of France, or become citizens of Germany. This right to optate was open until October 1, 1872. Bluntschli Voelker Recht, § 286.

This contract as between the contracting parties, France and Germany, could only apply to the citizens of the respective countries, parties to the contract. It could not in any sense apply to aliens living in either the provinces of Alsace or Lorraine. There was no evidence to show that Mely optated to become a citizen of Germany.

The rule was not applicable to him, nor did he come within it. His course was to comply with the German law of naturalization, after it had been extended to the provinces of Alsace and Lorraine precisely as would any alien. The application of the rule which might have been made in Germany, had he, as a naturalized citizen of the United States, returned to that country as the one of his nativity, and there re-

sided as he had done in France, to which country he did return, as the country of his nativity, is certainly far fetched.

He had lived in France, recognized as an American citizen, and was such by the laws of France at the date of the annexation in 1871. The German authorities then come in and say, because Mely has been absent from the United States for so long a time, and during that time has been in a foreign country, other than Germany, that he has lost his citizenship. Under the French law, he could only have acquired his former citizenship in France by naturalization. This he had not done.

Section 2000, Rev. Stat., was then in force, having been passed in 1868, by which naturalized citizens of the United States are entitled to the same protection as native born citizens when in foreign countries. This rule should have been enforced as against the claim as made by the German government, which was a mere subterfuge to expel Mely from the empire.

CASE OF ELIE BLOCK, 1879.

Born in Alsace in 1851. Emigrated to the United States in 1872 ; was naturalized in 1878, and returned to Germany the same year. He was notified that he had been fined for evasion of military duty. Upon investigation, the German government extended to him the right to remain in the place of his nativity, for two years, and then leave the country. F. R. of U. S., 1879, p. 373.

Block was not a native of Germany. He was a native of France, by the laws of which he was recognized as



a citizen of the United States for reason of naturalization in a foreign country. He had sought naturalization in the United States, subsequent to the annexation of Alsace to Germany. There does not appear to be any evidence of his having exercised the right of option to remain a Frenchman, or become a German. The fact is, he emigrated from Alsace before the time within which he could optate had expired. Upon return, the treaty of 1868 between the North German Union and the United States is applied which had not been extended to these provinces, except by implication and was adjudged accordingly.

The question of the application of the treaty was still open as between the United States and Germany. Subsequent to this, arose a similar case, that of Jacques Leob, which was under consideration at this time in 1881 by the German government. The decision was, that "Leob is no longer a citizen of Alsace-Lorraine." It is difficult to see how the German government could apply the rules, which governed in Germany, prior to the annexation of Alsace-Lorraine and were applicable to the natives of Germany, to natives of France, as were the inhabitants of these provinces at the time of the annexation. The obligations, which arise in Germany for reason of birth in that country, certainly were not applicable to natives of France at the time of their birth in France. Therefore, any such obligations, incumbent on natives of Germany for reason of birth in Germany, should not become applicable to the natives of France, who by annexation are separated from the country of their birth. And although such a native of France may be given the right to optate, yet, should

he optate to become a citizen of Germany, would this throw off any obligations which he might be under, as a native of France, to the government of France?

Certainly it would do so, were the annexation by treaty as was the case in 1871. By this a citizen of France would be relieved of any obligations to the French government. Would it, however, work such a change as to oblige such a person to assume obligations incumbent on Germans, natives of Germany, for reason of birth in that country? It would not. The annexation by treaty is equivalent to an authorized right of departure to the citizens of the country annexed, and with the privilege of an option to become German citizens, which option such a native of France saw fit to exercise. He thus becomes a naturalized citizen of Germany and assumes burdens, with the enjoyment of rights and privileges, such as the laws of Germany then give him. His position is precisely the same as that of any alien, who becomes a citizen of Germany by naturalization.

A further question arises under the report in this case. How could Germany have any claims on Block? By the treaty of annexation, Block, as a native of France, was given until October 1, 1872, within which to optate, and until he did decide; during that time he remained a citizen of France. He emigrated to the United States in September, 1872, and did so as a French citizen and not as a German, and the German government had no claims upon him prior to his departure. Upon this ground, it could readily have been decided that he was a French emigrant, naturalized in

the United States, and when he went to Germany he went as an alien.

CASE OF JEANNE PIERRE SCHANG.

Born in Alsace in 1853. Emigrated at the age of fifteen, in 1868, to the United States; was naturalized in 1880. While in the United States he was fined, and levy was made on his share in his father's estate, for neglect to perform military service to the German government. After investigation, it was decided by the German authorities that Schang, having emigrated before the annexation of Alsace Lorraine to Germany, the fine should be remitted. F. R. of U. S., 1881, p. 473.

CASE OF LABARD ROSENWALD.

Born in Alsace in 1854. Emigrated to the United States in 1872; was naturalized in November, 1878, and returned to Germany on a visit in 1879. In May, 1880, he was notified by the authorities to leave the country. The German authorities did not claim that he was a German citizen; he had emigrated subsequent to the annexation of the provinces to Germany, but within the year within which citizens of Alsace and Lorraine should optate to remain French subjects or become Germans. Nor was it held that former citizens of Alsace and Lorraine might become citizens of other countries, under the treaty. Rosenwald was allowed to remain the limit of two years, as stipulated by the naturalization treaty between the United States and the German states, which was extended to the provinces of Alsace and Lorraine in 1873. F. R. of U. S., 1881, p. 474.

## CASE OF ALOYS GEHRES.

Born in Alsace-Lorraine in 1856. Emigrated to the United States in 1872; was naturalized in 1877. While in the United States he petitioned for remission of a fine imposed for non-fulfillment of military duty to the German government. At time of emigration, the term within which to optate, as fixed by the German law, whether to remain French, or become German subjects, had not expired. The fine was remitted. F. R. of U. S., 1881, p. 474.

## CASE OF NICHOLAS VICTOR GABRIEL.

Born in Alsace in 1853. Emigrated to the United States September 10, 1872, and was naturalized June 8, 1880, and remained in the United States. After his departure he was fined for neglect of military duty. While still in the United States, he petitioned to have the fine removed. This was denied by the German government, which held that he was still a German subject, and the fine could not be remitted.

The policy, and consequently the law, which had governed in the United States in matters of annexation by purchase or otherwise, and to which acquiescence had been given by other nations, so that it had become a rule of international law, was to allow the inhabitants of the territory thus annexed, to become citizens of the United States, or to remain aliens. F. R. of U. S., 1881, p. 475.

In the year 1803, the republic of France and the United States both stipulated, as to Louisiana, that "the inhabitants of the Louisiana territory should be incorporated into the Union of the United States and

admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and religion which they profess."

Under this rule, the French inhabitant remained a Frenchman until he was admitted to citizenship by the law of the United States.

In the year 1819, the kingdom of Spain and the United States both stipulated, as to Florida, that the inhabitants of the territories which Spain cedes to the United States shall be incorporated in the union as soon as may be consistent with the principles of the federal constitution.

Under this rule, the Spanish inhabitant remained a Spaniard, until he complied with the law of the United States for admission of aliens to citizenship.

In the year 1848 with Mexico, it was stipulated, that the Mexicans in the ceded territories — "those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens or acquire those of citizens of the United States."

Until they had acquired the rights of citizens of the United States, they remained as Mexican citizens.

In the year 1867 it was stipulated in the treaty with Russia on the cession of Alaska to the United States "the inhabitants of the ceded territory according to their choice reserving their natural allegiance, may return to Russia within three years, but if they should prefer to remain in the ceded territory they shall be admitted to the enjoyment of all rights, ad-

vantages and immunities of citizens of the United States, and shall be protected in the free enjoyment of their liberty, property and religion."

Under this rule the Alaskan remained a Russian subject for three years ; at the expiration of that time to retain Russian citizenship, he must leave Alaska and take up his domicile within the Russian empire. This was not optional ; it was obligatory. The Alaskan, if he did not return to Russia, lost his Russian citizenship and became by force of the treaty an American citizen.

The principle is the acquisition of territory, which may be done by any of the known ways, by which private property is acquired by individuals. Halleck *Int. Law*, p. 75.

The custody of the persons on the territory does not pass by a cession of the control of the territory.

CASE OF ANDREW KLAM.

Born in Alsace in 1853. Elected to be a French citizen in 1872 ; he entered the French army ; emigrated to the United States in 1874, where he was naturalized in 1880. He was fined for non-performance of military duty in Germany. Upon investigation, it was held that his name be taken from the army-roll in Germany, but that the fine remain. *F. R. of U. S.*, 1883, p. 391.

CASE OF C. L. GEORGE.

His father, Peter George, a native of Germany, came to the United States in 1840 ; was naturalized in 1848 ; returned to Germany in 1851, and married there. The son was born in Alsace-Lorraine in 1859, that is,

after his father had been residing there eight years. Both father and son continued to reside there, until 1875, the son being then sixteen years of age, when they came to the United States. In 1884, the son returned to Germany, and was held for military duty, and imprisoned. It appeared that prior to his return, he took out naturalization papers on his own account. The German authorities held that he owed allegiance to Germany. This was not assented to by the United States, for reason that having been born abroad of an American citizen he followed the citizenship of the parent with the right to elect upon reaching his majority. F. R. of U. S., 1886, pp. 317, 325, 327.

#### WITH NORWAY AND SWEDEN.

##### CASE OF C. M. CEDERGREEN.

Born in Sweden in 1845. He emigrated to the United States in 1864, and was naturalized as a citizen of the United States in 1880, having taken out his preliminary papers in 1877.

In 1881, he returned to Sweden on a temporary visit; was called on to pay a fine for evasion of military duty. This he did not pay upon demand, and he was ordered to report for duty. At this time he had been in the country less than a year and had expressed his purpose to return to the United States within a few months.

It was held by the Swedish authorities "that Ceder-green should be stricken from the military lists, as he was undisputably an American citizen, but as he had not taken his first step to naturalization until 1877, his naturalization could not have a retroactive effect and

that, therefore, he was still liable to Sweden for his military fine imposed for his prior delinquency."

This position was not tenable under the treaty of naturalization between the two countries, and the practice; and after discussion, it was conceded by the Swedish government that where there was no military liability at and before the date of emigration, there could be no claim upon Cedergreen.

The age for service is twenty-one in Sweden, and Cedergreen was nineteen when he emigrated; therefore, the fine was remitted. F. R. of U. S., 1882, p. 488.

#### CASE OF PEDER SIGBJORNSEN.

Born in Norway. Emigrated to the United States in 1871, where he resided eight years, and became a naturalized citizen of the United States. In 1879 he returned to Norway, and in the spring of 1880 was called upon for military service. For non-performance of his duty, he was fined and paid the fine. Later in the year, he was informed that he must perform military service as a Norwegian subject. He asked for protection from the United States. It was held: "By the express terms of the treaty of 1869, Sigbjornsen could remain two years in Norway, without rendering himself liable to be claimed as a Norwegian subject. The two years had now nearly expired, but in view of the fact that his American citizenship had been disregarded for a period of several months and a fine imposed on him, it is agreed that he may remain in Norway about two years and five months in all, from the date of his arrival in Norway, and his fine was refunded him." F. R. of U. S., 1881.



## WITH AUSTRIA.

## CASE OF GUSTAVE SCHWETZER.

Born in Austria. He came to the United States in 1851; became naturalized in 1856; returned to Austria in 1859, and has remained there until 1881, when he asked for protection. It was held that Mr. Schwetzer had renounced his American citizenship and was not entitled to protection. F. R. of U. S., 1881, pp. 30, 52.

If the treaty of 1870 is to be considered the criterion of the laws of both the contracting parties, with Austria as well as the United States, then Schwetzer remained and was an alien in 1881, to Austria. Under article IV, it is held that a naturalized citizen of the United States, native of Austria, shall not be constrained to resume his former citizenship; "yet, if he shall, of his own accord, re-acquire it and renounce the citizenship obtained by naturalization, such a renunciation is allowable and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country."

This being the law of Austria applicable to the case, that country would continue to recognize Schwetzer as a citizen of the United States and the United States would continue to refuse him protection as an American citizen.

## CASE OF VITUS TAXACHER.

Born in Austria. When he reached the requisite age for military duty he reported and was put back for one year. During this time he emigrated to the United States; resided there more than five years, and then returned to Austria. He was arrested and impressed

in the service. Upon investigation, it was held that he was an American citizen, and the Austrian authorities released him. F. R. of U. S., 1884, pp. 9, 10.

CASE OF LOUIS FEINKNOFF.

Born in Austria in 1860. In 1876 he emigrated to the United States, where he became a naturalized citizen of the United States, and then returned to Austria, where he was impressed into the military service. It was held by the Austrian authorities, that he was an American citizen, and was, therefore, discharged. F. R. of U. S., 1885, pp. 5, 27.

CASE OF MATHIEU ARLICH.

Born in Austria. He emigrated to the United States, and became a naturalized citizen of the United States. After a residence of some years in the United States, he left that country and took up his abode in Turkey, where he resided for fifteen years, and then made a demand on the government of the United States for protection. It was held that the same principles applied as if he had returned to his native country, namely to Austria. The case was further considered as follows: Among the tests which may be applied to determine the intent of a naturalized person who resides continuously abroad, the fact of payment by such person of the income and excise taxes, which have been imposed by law upon American citizens, will be an important aid. Inquiry should be made when, and in what assessment district, the returns required by the internal revenue laws have been made, where, and to whom the taxes have been paid.

The omission to have made the returns or to have

paid any tax, would necessarily cast grave suspicion upon the claim of the party applying for the protection of a government, from whose support he has withheld the contributions required of all its citizens, whether resident at home or abroad ; and if such omission has been long continued, it will, as a general rule, justify the refusal of a recognition of the claim to protection. F. R. of U. S., 1871, p. 888.

#### WITH EQUADOR.

The case of Julio Romano Santos, a native of Equador. He emigrated to the United States, where in July, 1874, he became a naturalized citizen, and subsequently returned to Equador in the capacity of agent for American merchants. He was charged with complicity in a revolutionary movement, and consequently imprisoned. The Equadorian authorities took the position that according to the treaty of naturalization of 1872, articles 2 and 3, he had lost his American citizenship. The article 2 is as follows: If a naturalized citizen of either country shall renew his residence in that where he was born, without an intention of returning to that where he was naturalized, he shall be held to have re-assumed the obligations of his original citizenship, and to have renounced that which he had obtained by naturalization. The article 3 is as follows: A residence of more than two years of a naturalized citizen shall be construed as an intention on his part to stay there without returning to the country where he was naturalized. This presumption, however, may be rebutted by evidence to the contrary.

The authorities of the United States laid stress on

the terms of the treaty, "this presumption, however, may be rebutted by evidence to the contrary." This is equivalent to saying, that when such a citizen's intention to return to the United States is shown, his citizenship of the United States remains. It is true that while Mr. Santos, though a domiciled citizen of the United States is resident in Ecuador, he is subject to the penal laws of Ecuador, and that mere alienage or United States citizenship will not be a defense if he be tried for treason, or other offense against Ecuador. F. R. of U. S., 1886, p. 254.

DEDUCTIONS FROM THE PRACTICE UNDER THE NATURALIZATION TREATIES.

The two important questions, which are to be devolved from the practice, and which are alone to be devolved from the practice with the first group of states with which the United States entered into naturalization treaties, are first, that of obligations unfulfilled before departure from the country of origin, and second, the presumption of loss of citizenship by a continued two years' residence in the country of origin.

First, obligations. It is not strictly held that every German, for reason of his birth in Germany, is bound to perform military duty. The right of expatriation is recognized by both countries as a fundamental right. At the time of the discussion of the treaties in 1868 in the German parliament, Prince Bismarck remarked in debate on the question "that whoever bona fide emigrated with the intent to establish a new home for himself and his, elsewhere, could not be called upon to perform duties arising

from the fact of his birth in the North German union." Hon. George Bancroft, then United States minister at Berlin, wrote to Mr. Seward, then secretary of state, "the right of expatriation is acknowledged by the laws of both countries," meaning the North German union and the United States.

The best writers in the United States have maintained this position: "The right of voluntary expatriation exists only in time of peace and for peaceful and lawful purposes." Halleck, p. 133.

"The relation of subject to sovereign is a voluntary one to be determined by emigration, but a state is not bound to allow the departure of its subjects, until all pre-existing obligations have been fulfilled." Woolsey Int. Law.

The question has two elements: first, the fulfillment of pre-existing obligations. These obligations must be reasonable and not continuing in their nature; that is, they must be such as can be fulfilled and the emigrant thus prepare himself for a legal departure, for this is the very quintessence of a legal change of citizenship such as will be respected in international common law. The obligation as enjoined by Germany is susceptible of fulfillment. When a determined age is reached the subject becomes liable for the performance of a certain duty to the country; prior to that age the obligation does not arise, or if it does arise the practice has shown that any penalty imposed has been abated. Therefore, the stringency of a supposed existing rule that the obligation is for reason of birth and continuing in its nature, until fulfilled, may be held to be abolished, but not unless secured. The

further element is coupled with it, that the departure prior to reaching the age at which active service in the army is demanded, has been in good faith and consistent with such principles as govern an honest change of citizenship. The practice is and has been not to prevent or to interfere with the exercise of the right of expatriation when made in good faith, and this question of good faith is one to be interpreted from the acts of the party. These elements are purely within the scope of investigation of the authorities of the country of the emigrant's origin.

The cases are different when the departure is made without authority after the age for duty in the army has been reached. Here there can be no question of good intent. It goes without saying, that the departure is *mala fide*, and no argument should be offered in mitigation of such an act in behalf of an emigrant who departs under such circumstances. Such cases are construed to be desertion from the flag, and for such cases punishment should be administered.

There has been some misconception of the practice in both the cases of departure before and after reaching the age requisite for military service. These rules are not inconsistent with the international common-law practice. They conform to the practice as recognized prior to the ratification of the treaty. The authorities have ever maintained this practice. It has been error on the part of the United States that from 1860 to 1865 it failed to enforce the rule in restraint of departure of many of its citizens at a time when all citizens were "under the flag." Had it done so at that time, the spirit and purpose of the treaty stipu-

lations of 1868 would have been better understood.

Second, the presumption of loss of citizenship after a continued two years' residence in the country of origin. This rule has been enforced with much rigidity. From the practice it would appear that the United States has entertained the enforcement of the rule by its expressions of the import of its principle of naturalization, by which citizenship is conferred on aliens to the effect that they shall reside in the United States.

This rule is not intended to interfere with the proper right and exercise of locomotion for legitimate purposes, but as a test of good faith in the applicant in order that he shall not use his newly conferred citizenship as a matter of convenience, and thus avoid duties to both the country of his origin and that of his adoption. Citizenship carries within it an idea of permanency and not of transient conveyance by which an evasion of duties is rendered possible. It will be seen from the practice that in some cases the change of citizenship was made with a purely selfish intent and with no good intent either towards the citizens of Germany, or with the citizens of the United States. It is for the citizens of Germany, by their proper authorities, to judge of this intent in one regard and for the citizens of the United States, by their proper authorities, to judge of this intent in another regard. For the first to pass upon the good faith of the departure, and for the second to pass upon the good faith exercised in the acquisition of the new citizenship. It is not a mere and empty formality, a simple acting under the

naturalization law by the emigrant and then a speedy departure to the country of his origin, and then demand a release from all obligations to that country, and there take up his residence with an easy turning his back on the country of his adoption, which should be held as a change of citizenship. Such is not, nor has it been, the practice under the international common law. The change must be with a purpose of permanency and not for temporary use.

When made with this intent and the intent is admissible of this interpretation, a demand for protection should be entertained.

By the rule of return, however, to the country of origin in the practice under the treaties, there has been a want of consideration of the question of good faith in the change of citizenship, and the intent of making the same for a permanent purpose has been disregarded. The practice has been unfortunate in this, that no provision has been made for an expression of volition. The change of citizenship has been implied from the act of the citizen returning to the country of his origin and seemingly in two classes of cases. The first, when it was possible to infer a renunciation of citizenship in the United States by a two years' residence in Germany and thereby enforce the performance of actual military duty on the citizen, who had resided in the country of his origin for that space of time continuously, and second, when the application of the rule to a father would thereby effect a change in the citizenship of a minor son, who was of age to perform military service.

Such practice is not in conformity with the practice



with other countries and is not in accord with the rule laid down in 9 Op. Atty.-Genls. 356, that "in regard to the protection of our citizens in their rights at home and abroad, we have in the United States no law which divides them into classes or makes any difference whatever between them."

The practice under the treaty would seem to be that we admit of a class of our citizens who, born in Germany, naturalized in the United States, return to Germany, and there reside for two years continuously, lose their citizenship in the United States.

We have no other citizens who are subject to such rules; all other citizens of the United States may reside in Germany for that period of time, and for a longer period without the application of the rule as laid down in the treaty.

The rule is not in accordance with the principles of international common law.

#### THE RIGHT OF EXPULSION AS BETWEEN GERMANY AND THE UNITED STATES.

For a series of years prior to 1885 there had been prolonged discussions over the clause in the naturalization treaty of 1868 between the two countries as regards the practice as to the two years' uninterrupted residence in Germany of a former German subject naturalized in the United States, and who returned to the country of his origin, to Germany.

The German authorities construed the two years' residence to be a renunciation of the American citizenship and a re-acquisition of German nationality. They carried the construction still farther and made it applicable to the minor children of such Germans who

returned to Germany, and there, after having been naturalized in the United States, took up their residence and continued the same uninterruptedly for a period of two years.

The underlying principle which governed the legislation of the German empire was and is, that minor children standing under paternal control share the nationality of the father. The same is the American rule, and in this regard there was and is no conflict.

This rule of construction was applied to the two years' clause in the treaty in its relation and effect on the status of minor children of former Germans, naturalized in the United States.

Taking the two rules, the first, that the uninterrupted residence in the country of origin was a renunciation of American citizenship, and second, that its application should be made to the status of minor children of such former Germans, the practice became severe, because, by virtue of the enforcement of these rules, such minor children, when they reached the requisite military age, were called upon to perform military service; this was considered to be a great hardship, and gave rise to continuous remonstrances on the part of the government of the United States, in which it was, at times, successful, and at others, was unsuccessful in affording relief to such persons, who claimed its protection. It was partially with a view of avoiding this unpleasantness, but more for its own protection that the German authorities resorted to the idea, not of enforcing the performance of military service, but of expulsion from the country, and to include within the rule of expulsion other naturalized American citizens

of former German nationality, who should take up their residence within the empire.

In order to approach the assertion of the right to expel such citizens, two reasons were given. The first, the internationally recognized right of every state to remove foreigners from its territory, when their further sojourn in the country appears to be undesirable upon grounds of the welfare of the state.

The second, a resort to the systematic legal jugglery, by which a principle of law was evolved, which was in direct antagonism to the principles which governed in that regard in both countries.

It was this, that children of former German subjects, naturalized in the United States, who returned with their parents or otherwise to Germany, should be held to retain their American citizenship, although their parents should by an act of their own, or by a two years' uninterrupted residence on return to their country of origin, re-acquire their former German citizenship. That is, that the father might re-acquire his former nationality, and his minor child should retain his American citizenship, which he had acquired by birth in the United States, as the son of an American citizen as an inheritance from him. The father became a German again, and his son remains an American citizen.

The German foreign office took this ground: "As regards the fathers of such sons, no doubt can exist that they are to be regarded as having renounced their naturalization by a longer sojourn than two years pursuant to the treaties regulating nationality of 1868, concluded with the United States. The provisions of these treaties do not, however, extend to the minor

children of persons naturalized in America. The rules there prescribed cannot, therefore, find any application to the legal status of these children."

This had not been the practice heretofore, as has been shown by the cases cited. It has been held as the cases show, that the treaty was applicable to the status of minor children.

The authorities of the United States acquiesced in the view as follows: That the children of naturalized citizens born in the United States stood on the same ground as native Americans of American parentage.

This rule is just as far as it goes. It does not maintain, however, that a change in the citizenship of the parent fails to carry with it a change in the citizenship of the minor child. This is the rule of international common law well established and recognized. The minor child, upon reaching his majority, may then elect of what country he will be a citizen, and then comply with the law in order to perfect his citizenship.

Under these rules the German government has expelled such citizens from Germany.

Acting in direct violation of the German rule of citizenship by descent, and in contradiction of the recognized international common-law rule, this position was assumed by the German government, and the expulsion of such American citizens followed. Why any distinction should be allowed as between American citizens, it is difficult to determine. The government of the United States took the position that under such a rule the German government might expel any American citizen, whether of German extraction or not. This is true under the principle of the right of a state to

preserve its own welfare, and even then the rule must be applied only for good reasons and with great circumspection.

This is not the trouble; the trouble is found in the recognition of the principle, that the change in the citizenship of the father does not carry with it a change in the citizenship of minor children.

RECOGNITION OF THE GERMAN RULE BY THE UNITED STATES.

"The doctrine of the changing of the infant's nationality with the nationality and domicile of the father, rests on the assumption that such is the father's will, and that the change is in submission to his paternal power." Secretary Bayard to Mr. Pendleton, May 12, 1885.

In a discussion of the case of John L. Geist, the foregoing principle was announced.

Geist was born in the United States of a father naturalized in 1872, who subsequently returned to Germany, taking his son with him, where he resumed his German nationality. In his application for a re-acquisition of his former German citizenship, the father inserted this condition, "that his son, John L. Geist, being a native born citizen of the United States and a minor, should elect whether he would return to and take the nationality of his birth." It appeared by the certificate of naturalization granted to him, that it included his wife and all his minor children mentioned by name, with the exception of John L. Geist. The son, John L. Geist, was subsequently warned to leave the empire, for reason that his presence in Germany was undesirable to the welfare of the state.

This statement presents the question, Was or was not John L. Geist a German citizen?

Mr. Frelinghuysen to Mr. Kasson, January 15, 1885, lays down the rule to be that "during minority the rights of the minor, if he had any other than those possessed by his father, were at least suspended and subject to the father's allegiance." Further, the allegiant condition of the minor son, while residing within the jurisdiction and under the control of the father, follows that of the father. 15 Op. Atty.-Genls. 15.

Further: Under ordinary circumstances his status (John L. Geist), in both relations would have followed that of his father, when his father returned to Germany from the United States, and resumed his German nationality. But the father's resumption of German nationality by its own terms excluded from its purview the case of his son, John L. Geist." Secretary Bayard to Mr. Pendleton, May 12, 1885.

The position is, that Geist, by the act of the parent, became a German citizen. The parent could not exclude the son in the terms of his application for a resumption of German nationality. The mention of the names of his other minor children was superfluous and of no direct effect.

The general rule of public law is, that every person of full age has a right to change his domicile. Mr. Webster, secretary of state, to the president in Thatcher's case.

The requirement of full age means a person who has reached his majority; at this time in life the law recognizes the existence of the power to express an intent:

to declare his intent and by the declaration to elect the state of which he will be a citizen.

No law which governs the mode of departure nor which governs the acquisition of citizenship recognizes any act done thereunder unless done by a person of full age.

Full age is majority ; when a minor reaches majority then he can act for himself and in his own behalf.

The requirement of full age means the exclusion of the exercise of the right by those who are not of full age, that is by minors. A minor not being of full age cannot by his own act change his nationality. He can neither legally depart from the country of his origin nor can he legally acquire citizenship in another country. His acts would not obtain recognition under the laws of either country. The minor has no right which he can himself assert in the exercise of his own power to effect a change of nationality. During his minority he remains *sub potestate patris*. This was the rule of the Romans and has ever since been the rule. He himself cannot act. The father can act and by the act of the father a change in the citizenship of the minor be effected. This act of the father must be a perfect act of his and his alone, as the head of his family, for his change of nationality carries with it a change in the nationality of the members of his family.

The members of the family of which he is the head are the wife and the minor children. Upon the death of the father the mother does not become the head of the family in the sense, that an act of hers, by which to change her nationality, would effect a change in the nationality of her minor children.

This is the international common-law rule. The rule has some exceptions which are local and which may be questioned, when put into practice ; as for example, the rule in the United States, that the minor child of a foreigner, who seeks citizenship in the United States must reside within the United States. For example, a German born subject cannot emigrate to the United States and there reside and there become a citizen by naturalization and by his act confer this citizenship on a minor child, who has resided all the time in Germany. This is a local rule, yet under it protection has been denied to such minors, when coming to age upon allegations of citizenship by descent for reason of the change made by the father. It is doubtful if such a rule could maintain in the practice in case the minor were in a foreign country other than Germany or the United States and German protection were denied him because his father had acquired citizenship in the United States and renounced his German nationality. The rule is not of much importance, especially when it is possible for a minor child to go to the United States one week before his father's naturalization and return to his native country one week thereafterward, as a full-fledged American citizen, while still in his minority and without renunciation of old allegiance or swearing to the new.

"That such a thing is possible is a defect in the naturalization laws of the United States." Secretary Frelinghuysen to Mr. Kasson, January 15, 1885.

And yet this has been held to be the rule with perhaps a slight deviation. In a question in which the terms "residence" and "domicile" were discussed it was



decided as follows in England : " But the meaning of the word "residence" is different from "domicile," for an infant has the domicile of his parents until he attains his full age and does some act to acquire a new one, and thus his domicile may be in a country in which he has never personally been, whereas "residence" implies a personal presence at some time or other." *Walcot v. Botfield*, 1 Kay, 534.

#### LOCAL RULES.

Local rules which embody exceptions to the international common-law rule do not have much force in the practice.

Every country has fixed laws by which citizenship is acquired and by which it is lost. These laws are for the convenience of the citizens of the country, who reside within it and are such as they may deem just and proper for their own safety as to admission of aliens as citizens and departure of their own members to acquire citizenship elsewhere. These laws are enacted by and for persons of full age, and not for minors. The persons of full age act under them, not minors. By the laws of every country the minor is subject to the father's will; he is under the paternal power. This power the father cannot delegate to his minor children. He cannot delegate to his minor child the power to exercise his, the father's, will, and thereby effect a change of nationality, nor can he, this minor child, refuse to obey the will of the father, when the father seeks to effect a change of nationality. The child having no power to act for himself in this regard, cannot deny the existence of the power in his father, by which

he, the father, can effect a change of nationality, and with the change effect a change in the nationality of his minor child.

In Geist's case the father was born in Germany. Under German law the place of birth does not govern ; nationality is not acquired for reason of birth in a certain locality ; the child takes the nationality of the father. The children of Germans wheresoever born in the world are Germans. Geist's father took the citizenship of his father at the time of his birth by descent. Bluntschli Staatslehre, p. 65.

The father of Geist had entered into a compact with other citizens of Germany for mutual protection and their common welfare.

In the exercise of his free will and with right he emigrated from Germany and by naturalization in the United States entered into a compact for mutual protection and for the common welfare of citizens of the United States.

He had with him when he entered into the compact a minor son — the son could not enter into the compact — he had not the power, being a minor ; therefore, it was by no act of the son that he became a citizen of the United States. It was by the act of the father, who alone could contract as the head of the family.

The contract became binding on the father immediately upon naturalization and by implication on his wife and minor children. It was a contract with public right with the citizens of the United States. Bluntschli Staatslehre, p. 66.

The father subsequently returned to Germany and there renounced his American citizenship, taking with

him his minor son born in the United States. He excluded from the purview of his application his minor son.

The father willed two things ; first, that he become a German subject ; second, that his minor son remain an American citizen notwithstanding the rule that "wives and minor children follow as a thing of course the status of the head of the family." Woolsey Int. Law, p. 103.

There is no rule for the second part of his wish ; he could make no such exception. It is explained as follows : "The most charitable view to take of the father is that his mind is partially disordered." Mr. Kasson to Secretary Frelinghuysen, April 15, 1885.

The United States government subsequently took this position as to the case. The German government not only accepted the father's change of nationality, charged as it was with the reservation of the son's nationality continuing in the United States, but by requiring the son to return to this country at a specific period the continuance of the son's American nationality was formally conceded." Mr. Bayard to Mr. Pendleton, May 12, 1885.

Ergo because the German government assumed the right to expel Geist, he was an American citizen. For what reason should he be expelled ? Why not remain in Germany ? To admit of this right of expulsion as an element constituting the American citizenship of Geist is without support in the authorities. Nor is the position at all supported by the authorities that the father could make such a reservation in his application to re-acquire his former German nationality.

## THE ERROR IN THE RULE

This is found in the position taken by the German government that the American law contains no provision which makes the renunciation of American naturalization by the father act upon his minor son also. Dr. Busch to Mr. Kasson, December 31, 1884.

This statement is in conflict with the German and American practice. It may be true that *totidem verbis* the minor child is not referred to. The practice has been to the contrary without exception in the international common law and between the two countries.

## EXPULSION FROM SCHLESWIG-HOLSTEIN.

In the year 1885 a number of naturalized American citizens of German extraction returned to Fohr, an insular portion of the territory of Schleswig-Holstein.

The cases were these: Simon Meinert Baysen emigrated in the year 1863 at the age of sixteen years to the United States with a passport, but without having been discharged from Prussian allegiance; in the year 1870 he spent from two to three months on a visit on the island of Fohr and returned there with five children in 1885.

Minert Heinrich Riewerts, native of the same island, emigrated to the United States after discharge obtained from his government at the age of sixteen years and eight months.

Acke Edward Nickelsen, native of the same island, emigrated to the United States after discharge obtained from his government at the age of sixteen years and four months.

Ingwer George Jappen, native of the same island,

emigrated to the United States after discharge obtained from his government at the age of sixteen years and seven months.

Peter Cornelius Anderson, native of the same island, emigrated to the United States after discharge obtained from his government at the age of sixteen years and eight months.

Peter Jepsen, native of the same island, emigrated to the United States after discharge obtained from his government at the age of sixteen years and eleven months.

Hans Peter Jessen, native of the same island, emigrated to the United States after attaining the military age and without having responded to the duty of presenting himself for military duty.

Heinrick Friedrick Nicholas Rohlffs, native of the same island, emigrated to the United States after having attained the military age and without having responded to the duty of presenting himself for military duty.

Constantia, Heinrich Edward Rohlffs, native of the same island, emigrated to the United States after having attained the military age and without having responded to the duty of presenting himself for military duty.

In each of these cases the parties became naturalized citizens of the United States, and subsequently returned to the country of their nativity.

The German government, through Count Bismarck, December 21, 1885, laid down the following rule: Discharge from Prussian nationality cannot be refused in time of peace, to persons who have not yet reached the age of military liability, which begins with the

completed seventeenth year of life. It was assumed that in the cases of Baysen, Riewerts, Nickelsen, Jappen, Anderson and Jessen, that they sought the discharges only for the purpose of withdrawing themselves from the performance of military duty in Germany, and expulsion ordered from the country after sufficient sojourn to visit relatives, and time to attend to any business matters claiming their attention. The government of the United States invoked the treaty of 1828, article I, with Prussia, as regards the rights of citizens of the respective countries, in the countries of each other: "They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs, and they shall enjoy to that effect the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing." To this Count Bismarck replied: "Provisions of this character by no means conflict with the right of every independent state to expel foreigners from its territory, when such course is considered requisite, upon grounds of the welfare of the state and of public order." Count Bismarck went further and stated: "Germans naturalized in America who have resided five years in the United States are to be regarded as Americans, and are also to be treated as such in case of their return to Germany, so far as they have not, in accordance with article IV of the treaty, renounced the naturalization acquired in the United States.

They may, however, nevertheless, when the accompanying circumstances require, be expelled like any other foreigner. On principle, this right will be con-

sidered only when maturely considered grounds of the public welfare compel. F. R. of U. S., 1886, pp. 312-317.

THE RULE OF EXPULSION AS MAINTAINED IN THE UNITED STATES.

"This government could never give up the right of excluding foreigners whose presence they might deem a source of danger to the United States." Mr. Everett, secretary of state, to Mr. Mann, December 13, 1852.

"Every society possesses the undoubted right to determine who shall compose its members, and it is exercised by all nations, both in peace and war. A memorable example of the exercise of this power in time of peace was the passage of the alien law of the United States, in the year 1798." Mr. Marcy, secretary of state, to Mr. Fay, March 22, 1856.

"The control of people within its limits, and the right to expel from its territory persons who are dangerous to the peace of the state, are too clearly within the essential attributes of sovereignty to be seriously contested." Mr. Fish, secretary of state, to Mr. Washburne, September 17, 1869.

EXPULSION FROM GERMANY.

Case of Meyer Gad. Born in Russia. He settled in Germany, where in 1878, for malfeasance, he was expelled from the country; he went to Austria, from which country he went to the United States in 1879, where he became a citizen by naturalization in 1884. After naturalization he went to Germany to dispose of some property. Upon knowledge by the authorities of his return to Germany, he was ordered to leave the country.

The German government took the position that the measure of expulsion adopted against Gad before his naturalization as an American citizen must be maintained.

Without discussion of the question of the right of the German government to punish a breach of its municipal law by expulsion of the wrong-doer from its country to the territory of other civilized and friendly powers, with or without designation, and which country might have been as well the United States as any other country, the authorities of the United States decided the case as follows: "It does not appear that we can object to the German government's refusing to receive back to the scene of his alleged former depredations Meyer Gad, who appears to have been a wandering if not a predatory Polish Jew, Russian by allegiance of birth, American by allegiance of naturalization, Austrian by allegiance of residence, German if he could be by allegiance of present election." Secretary Bayard, F. R. of U. S., 1885, p. 423.

#### THE FOURTH ARTICLE OF THE TREATY.

This article has been the subject of much comment. The position assumed by the German government, that two years' uninterrupted residence in the German empire of a former German subject naturalized in the United States worked a change of nationality, has not received the assent of the authorities of the United States.

Two reasons have been advanced against the German position.

First, rebuttal testimony should be allowed to meet



the presumption of an intent to abandon the citizenship in the United States.

Second, by the German construction of the treaty the naturalized American citizen of German extraction becomes immediately without a nationality and is a citizen of nowhere. Where a former German subject naturalized in the United States returns to his former country and by his mode of life, his acquisition of property, his assimilation with the people of the country, he identifies himself in their every-day relations in business and otherwise and continues to do so for a period of two years' uninterrupted residence, such acts and doings are in themselves constructive of his intent and purpose. F. R. of U. S., 1885, p. 440.

To make the question of intent to return depend upon an inward mental operation is not practical. The intent should be deduced from outward circumstances by which the naturalized citizen governs himself during the period of two years. This is the rule which has always governed the principle formerly known in the practice of *animus manendi*.

The other reason, that acting on the presumption the naturalized citizen becomes without a nationality, does not seem tenable. The treaty does not contain *totidem verbis* that the naturalized citizen assumes his former German nationality. The intent that he wishes to assume his former nationality is deduced from outward circumstances by which he has governed himself during his two years' uninterrupted residence in the country. Under the German law in such cases only an expression of a desire to resume former nationality is requisite, and under the practice this has been the

meaning, and the former nationality resumed; the acts and doings of the naturalized citizen in his former country are held to work under the treaty a change of citizenship by operation of law.

The case of Augustus Reichard is directly in point. Born in 1820 in the then kingdom of Hanover; military obligations performed in 1840; emigrated to the United States in 1844; became a citizen of the United States in 1853; returned to Germany in 1881; returned subsequently for six months to the United States, and had intent to return to Germany, when he was advised to ascertain his prospective status upon return to Germany under article 4 of the treaty as concerns himself and his children. Reichard owned a villa in Germany; owned real property in the United States to which he purposed at some future time to return. The authorities of the United States held as follows: "The only effect in our view of the case of your overstaying two years would be to give the German authorities the right to say (without our interference) that you or your children or both must become naturalized or leave the country. As long as you hold to the bona fide intention to return to the United States to reside there as a citizen we hold you and your minor children to be still American citizens." F. R. of U. S., 1884, p. 213.

#### WITH GREAT BRITAIN.

##### THE CASE OF JOHN R. MCCORMICK.

Born in Ireland he emigrated to the United States where he became a naturalized citizen of the United States on the 25th of October, 1867. He subsequently

returned to Ireland where he resided uninterruptedly for a period of over fourteen years. He was imprisoned by the English government for an infraction of its laws and claimed an indemnity for five months' imprisonment from that government for reason of his confinement as an American citizen.

It was held by the authorities of the United States: "The case of British subjects naturalized in the United States who return to and voluntarily resume a permanent residence within the territorial jurisdiction of her Britannic majesty must rest for settlement and determination upon the facts and upon well-understood and settled principles. After a careful consideration of the facts and circumstances of the case it is not conceived that the claim is one which can with propriety be presented by this government to the government of that of Great Britain. No suggestion of this instruction, however, is to be taken as expressing an opinion as to what Mr. McCormick's political status would be should he return permanently to the United States, nor as to the action of this government were he suffering present unjust personal treatment." F. R. of U. S., 1884, p. 219.

In this connection two opinions have reference: "When the individual removes himself, his family and his property from the country, and takes up his residence in a foreign country, manifesting no intention to return to the United States, he is to be considered as having renounced his allegiance to this government." 8 Op. Atty.-Genl., p. 139. 9 Op. Atty.-Genl., p. 63.

Such a presumed renunciation does not necessarily

change citizenship so that it may not be regained by a return to the United States.

CASES OF DENNIS H. O'CONNOR, MICHAEL HART, DANIEL MCSWEENEY, M. B. FOGERTY, MICHAEL BAYNTON, JOSEPH B. WALSH, JOSEPH D'ALTON, JOHN CORMICK, JAMES L. WHITE, JAMES F. DALY, HENRY O'MAHONEY, WILLIAM BROPHY, JOHN MCENERY, PATRICK SLATTERY.

In each of these cases the parties were citizens of the United States who went to Ireland and were arrested under the act of Parliament known as "An act for the better protection of property and persons in Ireland."

In most of the cases the option was given to the arrested citizens to return to the United States if they so wished.

"Any person who is declared by warrant of the lord-lieutenant to be reasonably suspected of having at any time since the 30th day of September, 1880, been guilty as principal or accessory of high treason, treason, felony, or treasonable practices, wherever committed, or of any crime punishable by law committed at any time since the 30th day of September, 1880, in a prescribed district, being an act of violence or intimidation, or the inciting of an act of violence or intimidation, and tending to interfere with or disturb the maintenance of law and order, may be arrested in any part of Ireland, and legally detained during the continuance of this act in such prison in Ireland as may from time to time be directed by the lord-lieutenant, without bail or main prize; and shall not be discharged or tried by any court without the direction of the lord-lieutenant, and every such warrant shall for the purposes of this act be conclusive evidence of all matters therein con-

tained, and of the jurisdiction to issue and execute such warrant, and of the legality of the arrest and detention of the person mentioned in such warrant."

The position taken by the English government on these arrests was, that it could make no distinction as to the enforcement of the terms of the act between the liability of foreigners and British subjects. F. R. of U. S., 1882, p. 212.

In this the authorities of the United States concurred.

F. R. of U. S., 1882, p. 219, quoting the position taken by Mr. Buchanan in 1848, when certain citizens of the United States were arrested and confined in Newgate prison, Dublin, under the law suspending the habeas corpus: "If this law, arbitrary and despotic as it is, had been carried into execution in the same impartial manner against the citizens and subjects of all foreign nations, this government might have submitted in silence." The reason for the position taken by the English government is assigned by Lord Granville, June 28, 1881, despatch to Sir Edward Thornton. Par. Pap., U. S., No. 2 (1882).

"The right of every state to subject foreigners within its limits, no less than its own subjects, to every law made for the maintenance of law and order, is an undisputed principle of the law of nations, and is a right necessarily inherent in the sovereignty of every independent community." See Phillimore on International Law, vol. 1, p. 454.

The principles thus stated apply alike to exceptional laws, which the necessities of state have caused to be imposed, and to the action of the ordinary tribunals.

Foreigners, whether native born or naturalized subjects of their own state, are equally amenable to the laws for the time being in force in the country in which they are resident.

In this view Mr. Blaine concurred as follows in O'Connor's case, "that the act of parliament, under which O'Connor is held, is a law of Great Britain, and it is an elementary principle of public law that in such case the government of that country, in the exercise of its varied functions, judicial and executive, administers and interprets the law in question. The right of every government in this respect is absolute and sovereign, and every person who voluntarily brings himself within the jurisdiction of the country, whether temporarily or permanently, is subject to the operation of its laws, whether he be a citizen or mere resident. In stating this familiar principle no more is conceded to Great Britain than every country may of right demand, and it is one of the sovereign rights which the government of the United States has always insisted upon and maintained for itself."

Throughout the discussion of these cases the English government did not raise the question of abandonment of citizenship.

It was raised by Mr. Lowell, the minister of the United States, as follows: In treaties with the North German confederation, and with Wurtemberg, the United States have agreed to consider two years as the reasonable limit beyond which a continuous residence in his native country by the naturalized citizen of another, will be considered as establishing the *animus manendi*. In the cases of most if not all the so-called

suspects in Ireland, continuous residence has exceeded this term; in some it has greatly exceeded it. I cannot help thinking that the British government would be justified in questioning the final perseverance of adopted citizenship, under adverse circumstances like these." F. R. of U. S., 1882, p. 240.

Under the position taken by the English government, that the principles of international law sustain it to the point that both foreigners and subjects should be judged alike for an infringement of the law, it was wholly unnecessary to call into question the naturalization treaty between the United States and Great Britain, under which directly no cases appear to have arisen, for the reason that it is quite agreed between the two countries that the right of expatriation exists, and that allegiance may be thrown off, and to be re-acquired it must be under the respective naturalization laws of the countries.

It is error to interpret the English treaty by the German rule, nor is the interpretation put upon it, as hereinbefore stated, the correct one.

The principle of intent, and the right to express the intent, is an essential requisite under the international common-law rule.

The construction, hereinbefore attempted in F. R. of U. S., 1882, p. 240, must not be held as wise or quoted.

**THE PRACTICE WITH COUNTRIES WITH WHICH THE UNITED STATES HAVE NO TREATIES OF NATURALIZATION**

**WITH THE ARGENTINE REPUBLIC.**

The case of John S. Rowe, born of English parents in the republic of Argentine; in 1868 he went to the

United States with the object in view of obtaining an education. He remained there until 1875, during which time he became a naturalized citizen of the United States. In 1875 he returned to the Argentine Republic and was there summoned to perform military duty as a citizen of that country; he failed to comply with the order and was placed under arrest. Upon demand of the United States authorities he was released pending the settlement of the question, which was at first allowed by the authorities of the United States to be submitted to the local tribunals of the Argentine Republic. This undignified position assumed by the United States government was subsequently changed by that government, and the rule laid down by that government that "even in the absence of a specific treaty on the subject, this government must, in consonance with the principle it uniformly follows, claim for a duly naturalized citizen of the United States abroad all the rights which a native American citizen would possess under like circumstances." Secretary Frelinghuysen to Mr. Osborn, June 19, 1882.

This practice is in direct conflict with the rules as laid down under the treaties of naturalization with the first group of states as has been treated hereinbefore.

WITH THE KINGDOM OF ITALY.

The case of Felice Largomorsino. Born in Italy; he emigrated to the United States when a minor, became a naturalized citizen and in 1875 returned to Torrenti in Italy, intending to spend a year in his native land, and then return to the United States. A few days after his arrival in Italy he was notified that



he had been drafted to serve in the army. He claimed to be an American citizen and refused to obey the summons, in consequence of his refusal he was arrested on the charge of having deserted from the Italian army. His case was heard and appealed to the supreme court sitting in Rome, by which the charge of desertion was dismissed, and it was ordered that he be remanded to take his place in the army. He claimed the protection of the government of the United States. The Italian government insisted that the law which governed the case was as follows: "There are two categories of Italian foreign naturalized subjects. First, the children of parents naturalized abroad, who by the act of their parents have themselves become aliens. Second, children of Italian parents, who have themselves become naturalized in a foreign country, whose parents have not changed their nationality but have remained subjects of Italy."

Largomorsino was held to fall within the second category, the parent who took him to the United States not having become a citizen of that country. It was further held that by the Italian Code "loss of citizenship does not carry with it exemption from military duty." He was, therefore, held to a performance of that duty to the Italian government although recognized as an American citizen. At the end of three years' service he was released, yet throughout that period he was held by both countries to be an American.

The position taken by the authorities of the United States was that his release should be granted on grounds of amity and comity existing between the two coun-

tries. This rule was not recognized by the Italian government.

It would seem that the United States, by this act, fully agreed with the prevailing principle in international common law that Largomorsino, having failed to fulfill existing obligations before his emigration from Italy, could be held to a performance of such obligations upon his return. Both countries, however, concurred in his status as being that of an American citizen.

"The government of Italy does not recognize foreign naturalization as extinguishing the obligation of its former subjects to military service, nor has that government any treaty stipulations with the United States, which in any way modify the case so far as our citizens are concerned. If, therefore, such native so naturalized returns to the jurisdiction to which he was once subject the American passport which will be given him on proper application will insure the earnest attention of our diplomatic and consular officers in case there may be any proper opportunity to be of service to him. The department cannot, however, guarantee freedom from detention, nor protection and release in case charges are prosecuted, based on conditions preceding the acknowledgment of obligation to the United States." Mr. Frelinghuysen, secretary of state, to Mr. DePierre, December 16, 1883.

#### WITH FRANCE.

The case of John H. Foichat. Born in France in 1853; when seventeen years of age he emigrated to the United States. In May, 1883, he became a natural-

ized citizen of the United States, and in April, 1884, he returned to France. He was arrested for having failed, when twenty-one years of age, to report for military duty on the charge of insubmission, was detained for some time and then released. He then made a claim for pecuniary damage.

Mr. Jules Ferry made reply to this claim : " Upon principle we have constantly refused to admit that a Frenchman naturalized in a foreign country can be exempted, if he returns to France, from being answerable for the offense of insubmission when the naturalization has taken place subsequently to the existence of the offense. We cannot abandon this jurisprudence, which is dictated by a question of public order of a most important character, and against which the government of the United States would be all the less founded in protesting, as it is in conformity with one of the principal provisions which appear in the treaties of naturalization concluded by it with certain powers." He then refers to article 2 of the treaty of 1868 between the United States and the kingdom of Prussia.

The correspondence in relation to this case continues as follows : The principles which govern are as follows : First natural citizenship in France is not incidental to the place of birth, but to parentage ; it is a privilege obtained by inheritance. A Frenchman carries with him his nationality wherever he goes, and transmits it to his children wherever they are born.

A Frenchman can expatriate himself only if he obtains the consent of his government. He may lose his national character by doing a number of things which are described in the Code, among them his

naturalization in a foreign country, whether with or without consent of his government. By so doing he cannot evade the duty of submission to the military laws, provided he is a citizen of France at the time when such submission is required by law. The good faith in his change of citizenship may be drawn in question and investigated by the French authorities. They are very jealous of their military requirements and hold tenaciously to their principle of performance of all existing obligations which accrued before the change of nationality. They maintain further that the act of emigration should be by consent, for reason that a record is kept of all French citizens born in and out of France, and whenever a change of nationality is made, it becomes a question for investigation. The acquisition of citizenship in a foreign country for the purpose of evading an existing law, will not avail under the French law. Jules Ferry to L. P. Morton, October 22, 1884.

The case of Henri Pepin. He was born in France; his father had resided in the United States and had there become an American citizen; his mother was French, and after marriage went, upon one occasion, temporarily, to the United States. The son had never been in the United States; he always lived in France, and had expressed no intent to remove to the United States and there reside. He claimed protection as against the law of France, that every Frenchman must render military service to his country. It was held that the act of his father in returning to the country of his nativity and having there resided for more than twenty years, furnished the presumption of a purpose of

expatriation so strong that rebuttal testimony must be produced in a satisfactory manner to repel the presumption, and that no protection could be afforded against the operation of the law of the country which had been chosen as a domicile until such rebuttal testimony is produced. F. R. of U. S., 1873, p. 261.

In the case of Eugene Albert Verdelet, the facts were these : He was born in France in 1862, where he always resided with his family ; his father, a Frenchman by birth, resided in the United States for thirty-five years, where he became a citizen in 1853. In 1859 he returned to France, where he resided until he died, in 1874. Upon reaching his majority, Verdelet took the oath of allegiance before the American consul to the United States, furnished no evidence that he purposed living in the United States, and asked that he be furnished with a certificate of his nationality from the government of the United States. It was held that a passport is the usual form in which this government attests the nationality of its citizens. Under the circumstances of Verdelet's case it is considered that he is not entitled to a passport and consequently that he cannot justly claim a certificate in any other form attesting the fact that he has maintained his American nationality. F. R., 1883, p. 285.

The case of Victor Labrone. Born in France in 1865. His father, Ernest Labrone, born in France in 1829, emigrated to the United States in 1853. In 1856 he settled in the state of Minnesota, where, in 1856, he was married. In 1863 he was duly naturalized in the United States. In 1864 he was called back to France and took up his residence in Bordeaux. Victor Labrone

took the oath of allegiance to the United States at the American consulate, declaring that his domicile was in Minnesota, and that it was his intention to return at some future time to his domicile. He was never in the United States. His application for protection was in 1886. It was held by the American authorities that his case came within section 1993 of the Revised Statutes, by which all "children heretofore born, or hereafter born, out of the limits of the United States, whose fathers were, or may be at the time of their birth, citizens thereof, are declared to be citizens of the United States, but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

The first question was whether the father was an American citizen at the date of the birth of his son Victor. There was no evidence to show that he had abandoned his American citizenship. By the law of nations he would be entitled when of full age to elect which of the two allegiances he will accept. It was held that he must make an election which "to be operative must not only be formally and solemnly declared, but must be followed by his coming to, and taking up his abode as soon as practicable in the United States. Should he remain voluntarily in France after the period when the French law as well as the law of nations requires him to make his election, this may properly be regarded as an abandonment of American, and an acceptance of French, allegiance." *For. Rel.*, 1886, p. 303.

This rule coincides with the French Municipal Code, article 1 of the law of 1851.

Any individual born in France, of a foreigner, who, himself, was born there, is French unless in the year following the time of his majority, as fixed by French rule, he claims his foreign nationality by a declaration made either before the municipal authorities of the place of his birth or before the diplomatic or consular agents of France abroad, and establishes that he has maintained his original nationality by an attestation, in due form, of his government, which will remain affixed to his declaration.

WITH RUSSIA.

Case of Isaac Goldner. Born in Odessa, Russia, in 1858; when twelve years of age, in 1870, he went to Germany, from there in 1872 to the United States, where he remained continuously until 1880, having served in the army of the United States five years of that time. In 1881 he returned to Odessa on a visit to his friends, and was immediately arrested and held for service in the Russian army. Pending the investigation of his case, he was released on bail, which he forfeited by returning to the United States.

Case of Paul T. Batzell. Born in Riga, Russia, in 1848, he left for the United States in 1872, and became a naturalized citizen. Subsequent to his naturalization, he desired to return to Russia, solely for a temporary visit. He received no reply to his request from the Russian authorities.

Case of Louis Colsky. Born in Russia, and in 1862, when sixteen years of age, he emigrated to the United States and served in the army of the Union to the close of the war; was then naturalized; married in

the United States; had four children. His parents died in the meantime, leaving to him a legacy which he desired to collect. He requested permission from the Russian authorities to make a personal visit to his former home, but received no answer.

The position taken by the Russian government is in direct antagonism to the international common-law practice. The municipal rule which governs such cases is found in the Penal Code, article 325, which is as follows: "Whoever, leaving his country, enters without the authorization of the government into a foreign service or becomes a citizen of a foreign power, incurs on account of this violation of his oath of allegiance and of his duties as a subject, the privation of all his civil rights and perpetual exile beyond the limits of the empire, or in case of voluntary return to Russia, deportation to Siberia, to be colonized there." F. R. of U. S., 1881, pp. 1028, 1029.

The principle is, that no individual can go beyond the limits of the empire without a passport; and no passport is given unless all claims are discharged. The claims are not by the government to perform military service, but relate to taxes, personal indebtedness, suits at law, or other similar obligations.

AMERICAN CITIZENS, NOT NATIVES OF RUSSIA, NOT  
ALLOWED IN RUSSIA BECAUSE THEY WERE JEWS.

Case of Marx Wilczynski. He was a citizen of the United States by naturalization, having been born in Germany. He went to Russia on business for a mercantile firm having its head-quarters in the United States. He took with him a passport as an American



citizen. He reached St. Petersburg, and was ordered, very soon thereafter, to leave Russia; the authorities indorsing his American passport, as follows: "The bearer of this passport, a North American citizen, a merchant, and a Jew, Marx Wilczynski, is forbidden to reside in St. Petersburg." Upon complaint made to the Russian government, it was held that Wilczynski might return to St. Petersburg, and remain six months.

Other cases similar to the foregoing arose at about the same time, and were decided in a similar manner by the Russian authorities. F. R. of U. S., 1881, pp. 990, 996, 1004. F. R. of U. S., 1886, p. 773.

By the treaty of 1832, between Russia and the United States—a treaty of commerce and navigation—it was agreed, "the inhabitants of their respective states shall be at liberty to sojourn and reside in all parts whatsoever of their respective territories in order to attend to their affairs; and they shall enjoy to that effect the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing, and in particular, to the regulations in force concerning commerce." F. R. of U. S., 1881, pp. 1030–1036.

There is no reference made to the religious belief of a citizen of either country. And yet the Russian government assumed and maintained the position that an American citizen of the Jewish faith was not entitled when in Russia to any other or greater privileges than Russian Jews enjoyed in Russia. Mr. Evarts to Mr. Foster, September 4, 1880.

How this construction is admissible can only be ex-

plained in this way: That the laws of Russia proscribe Jews to enjoy lesser rights and privileges in Russia, than were enjoyed by other Russian subjects. This may be what was meant by the closing clause in the article of the treaty, "and in particular to the regulations in force concerning commerce." It is not to be denied that certain commercial and trading privileges were denied to Jews at that time. It is difficult, however, to perceive how this proscription should turn against and include American citizens of the Jewish faith. *Ap. M. de Giers, F. R. of U. S., 1881, p. 1037*

When aliens come to the United States and become naturalized, the government does not inquire into their religion, and when once American citizens, they are not protected when abroad for reason of the religion which they may profess, but because they are American citizens, and as such are entitled to protection. *Mr. Blaine to Mr. Foster, June 22, 1881, July 29, 1881, Nov. 23, 1881.*

Under the statutes of the United States, the naturalized citizen is entitled to the same protection when abroad, as are native citizens.

Wilczynski was not a native of Russia; he was under no obligations and bounden by no ties to that country for reason of birth or otherwise. He went there as a law-abiding citizen of the United States. Any distinction of a local nature as between inhabitants of different religious beliefs, natives of Russia, was not applicable to a citizen of the United States. He was not tried and found to be a Jew, which should have been done. The proceeding was upon the presumption

that he was a Jew, and therefore he was classed with those of his own faith. Nor was he tried for the violation of any local law, which denied to Jews the rights of trade and privileges of commerce, provided there had been such laws. The proceeding was arbitrary; he was entitled to a hearing, and should have had it.

Israelites in general are subject to special legislation in Russia. By Code of Laws, vol. IX, ed. 1876, article 992, Israelites are forbidden to immigrate to Russia, and to receive Russian naturalization.

To this rule there are exceptions, as found in Code of Laws, ed 1857, article 530.

1. Those whom the imperial government invites to come to Russia, to exercise the functions of Rabbis.

2. Those who come to Russia with the object of creating manufactories and workshops (with the exception of distillers), and who can show a capital for this purpose, of at least fifteen thousand roubles. The individuals at their entry into Russia must engage, in writing, to create said establishments within a period of three years. In cases where they shall be found not to have complied with the terms of their engagements, they shall be expelled from the empire. On the contrary, in case they shall have fulfilled it, they shall have the right to become Russian subjects and shall select a legal status. Artisans, called to Russia by them to work in the factories, shall be admitted by certificate, and after a sojourn of five years and evidence from their employers and the local authorities, attesting their skill and their irreproachable conduct, they shall be permitted to establish themselves permanently in the

localities of domicile acquired for Israelites, and to become Russian subjects.

WITH FINLAND.

Although Finland is subject to Russia, yet the relation is not such that the Penal Code, article 325, relates to that territory as it does to Russia. The general laws of Russia do not apply to Finland, and the rule which governs there does not restrict emigration nor punish the return of its former subjects naturalized in foreign countries as is done in Russia. F. R. of U. S., 1881, p. 1029.

THE PRACTICE WITH MEXICO.

There is a well-settled and fundamental principle as regards citizenship which is, that no municipal law can in itself create or destroy the status of a citizen when established in the international common-law practice.

With Mexico there is a rule which has not received approval in its application to foreigners who may sojourn in that country.

The rule is that established by the thirteenth article of the Mexican constitution, section three, which provides that foreigners who acquire real estate in the republic, unless they declare their intention of retaining their nationality, become by that act Mexican citizens.

The declaration of the intent to retain nationality is provided for by application to the foreign office of the Mexican government for a certificate of matriculation.

To illustrate this rule: William Lewis Zuber, as a foreigner, went to Mexico and there became possessed of a piece of urban property in Mazatlan. He made

no application to the Mexican government prior to his acquisition of this property for a certificate of matriculation by which to obtain recognition as a foreigner and retain his nationality. It was held by the Mexican authorities that he had renounced his former citizenship, and by the act of acquisition of real property had become a citizen of Mexico.

Had Zuber, prior to his acquisition of the real property at Mazatlan, applied for a "carta de matricula" he would have retained his nationality. Having failed to do so the presumption arises that he knew the provision of law as contained in the Mexican constitution and thereby intended to renounce his nationality and become a Mexican citizen.

On the question of the standing before the Mexican commission of certain American citizens, owners of land which they cultivated in Mexico, it was decided by Dr. Francis Lieber that they had not lost their American citizenship; "the claimant has not lost his nationality by the act of his having established his domicile temporarily in Mexico, nor by having acquired real estate there." F. R. of U. S., 1886, p. 723.

There is error in the inference that a presumption can arise as to an intent to acquire or renounce citizenship. There must be an express volition.

The Mexican law provides that citizenship is acquired by descent; that citizenship may be acquired by naturalization. These rules are consistent with the practice as known to international common law, by which the status of citizens is established. The further rule, that by simple acquisition of real property without procuration of certificate of matriculation, is incon-

sistent with the practice, and finds comparison only with the fourth article of the naturalization treaty between the United States and Prussia, by which the right to declare an intent is taken from the citizen and he is to be adjudged by his act.

It is wholly within the power of the Mexican government to prescribe regulations by which foreigners may reside in that country; these must be reasonable and consistent with public law. It was not reasonable to prescribe, as the practice did do, that the failure of a foreigner to obtain a certificate of matriculation, precluded his right to demand protection from his government. Unquestionably foreigners are amenable to the local law, but this rule does not carry with it a loss of citizenship in case the foreigner failed to matriculate. Nor was this the purport and intent of the rule as laid down by Mexico. That government would not protect such an alien whom it had declared to be a Mexican citizen, should such an alien so declared to be a citizen of Mexico, return to his country of origin or to another foreign country. The rule was a municipal regulation. It did not carry with it protection abroad, to such citizens so declared to be citizens without expression of an intent to become Mexican citizens on their part.

A similar rule was laid down by the government of Venezuela. In that country it was declared by law, that all persons visiting Venezuela became citizens of Venezuela. To this, objection was raised by the United States and the rule was not enforced as against the citizen of that country. 9 Op. Atty.-Genls. 356.

The Mexican rule was in conformity with the rule

of the Roman civil law "*actor sequitur forum rei*." The rule as to real property questions was the rule "*locus rei sitae*." By the matriculation requirement, the authorities confirmed these rules with the declaration that failure to take out a certificate of matriculation was to be construed that for the purposes of jurisdiction these foreigners who failed to comply with the matriculation regulation were to be considered as Mexican citizens. They did not become Mexican citizens in the same sense as if acquisition of citizenship had been by descent or applied for under the laws of naturalization.

There is no other construction to be put upon the rule, for the reason that it did not carry with it the protection abroad which is the most essential element in citizenship, as recognized in the international common-law practice.

In what respect as to amenability to the Municipal Code of Mexico were foreigners exempt who did take out the certificate of matriculation? The common-law rule, which was based on a pure legal fiction, was not applicable to Mexico, by which personal actions, whether arising *ex contractu* or *ex delicto*, were transitory. In Mexico, taking its rules from the Roman civil law, there was no fiction in this regard by which a personal action, arising from tort or contract, was supposed to have been inflicted or contract to have been made within the local jurisdiction, and this permits the action to be brought in the domestic forum.

The Roman rule was incorporated into the modern international law; the right was recognized of foreigners to contract with citizens of other states, in the state

of such citizens, and vice versa, which right necessarily draws after it the authority of the local tribunals to enforce the contracts thus made, whether the suit is brought by foreigners or by citizens. Foelix, *Droit International Privé*, §§ 122, 123. Wheaton *International Law*, § 20.

It would seem that the conclusion must be, that the rule requiring matriculation in Mexico, in order to preserve the nationality of a foreigner sojourning in that country, was not in effect a change of citizenship, for the reason that it could not obtain recognition in the international common-law practice. As an internal regulation, it went too far, but more in terms than in fact. With the United States, it originally precluded the right of intervention, by which to afford protection to its citizens in some cases; since then, however, the rule has been modified in this, that it is left optional with foreigners residing in Mexico, to request a certificate of their nationality, which will be issued to them by the secretary of foreign relations. There is no ground for a rule by which to preclude the right of a country to intervene and protect its citizens. The United States took the position in the case of Zuber, hereinbefore cited, that instructions should be issued by which to notify citizens of the United States, that they be made aware of the existence of the Mexican law, in order to avoid their being brought into trouble; although it did not recognize the right of the Mexican government, by its laws, to thus force a change of citizenship on its citizens, who might sojourn in Mexico, and there acquire real estate.

In another case, however, the force of a law by



which citizenship was held to have been changed by a former citizen of the United States was recognized. It was the case of James W. Smith, a former citizen of the United States, who entered the military service of the republic of Mexico. By the laws of that country, this act worked a change of citizenship, and Smith became a citizen of the republic; after his death, the question arose as to the nationality of his minor children who had been born in the United States.

It was held: "If within the jurisdiction of the United States, their right to American citizenship would be unimpaired, and even if within Mexican jurisdiction during minority, they would, in the absence of any Mexican law specifically attaching the altered status of the father to his minor children within Mexican jurisdiction, be still properly regarded as American citizens. But if there be such a law, or if, on attaining majority, they remain in Mexico, and come within any provision of Mexican law, making them citizens of that republic, they could not be regarded as citizens of the United States." Mr. Seward, secretary of state, to Mr. Foster, August 13, 1879.

The case of Emilio Boig. Born in Russia, he emigrated to the United States in 1871, and five years later became a naturalized citizen. Subsequently he went to Mexico where he was arrested, and forced into the army. He applied for protection. It was held by the Mexican government, that because he had not applied for a certificate of matriculation as an American citizen, that he could not be recognized as an American citizen in Mexico.

These vexed questions, which have caused so much

feeling between the United States and Mexico, have been solved by laws defining the status of citizens and foreigners in the Mexican republic, passed in 1886.

MEXICO — LAW CONCERNING FOREIGNERS AND NATURALIZATION — PROMULGATED IN 1886.

CHAPTER I.— OF MEXICANS AND FOREIGNERS.

ARTICLE 1. Mexicans are :

(1) Those born on national territory, of a father Mexican by birth or by naturalization.

(2) Those born on national territory, of a Mexican mother and a father not recognized as such by the laws of the republic. Those born of unknown parents or of unknown nationality shall be likewise [so] considered.

(3) Those born outside the republic, of a Mexican father who has not lost his nationality. If this should have occurred, those children shall be reported as foreigners ; having the option, though, of becoming Mexicans within one year from the day they attain twenty-one years, provided, if they live abroad, they make the due declaration before diplomatic or consular agents of the republic ; or, if they reside in national territory, before the department of foreign affairs.

Should the children referred to in the preceding paragraph reside in national territory, and should they, on arriving at maturity, accept any public position, or serve in the army, navy or the national guard, they shall be considered Mexicans in virtue thereof, without the need of further formalities.

(4) Those born outside the republic, of a Mexican mother and unknown father, provided the former has

not lost her nationality, according to the provisions of this law. If the mother should become naturalized in a foreign country her children shall be foreigners ; but they shall have the option of becoming Mexicans under the terms and conditions of the preceding paragraph.

(5) Those Mexicans who having under the provisions of this law lost their national character, and who may have recovered it by complying with the due requisites, according to the different cases treated of.

(6) The foreign woman who marries a Mexican, and who, even during her widowhood, retains her Mexican nationality.

(7) Those born outside the republic, but who, being here in the year 1821, and having taken the oath of independence, have continued to reside in national territory and have not changed their nationality.

(8) Those Mexicans who, established in the territory ceded to the United States by the treaties of February 2, 1848, and of November 30, 1853, complied with the requirements of said treaties to preserve their Mexican nationality. Mexicans who continue to reside in territory belonging to Guatemala are in the same category, also citizens of that republic remaining in territory belonging to Mexico, as specified by the treaty of September 27, 1882, provided said citizens comply with the stipulations of the fifth article of that treaty.

(9) Foreigners who may become naturalized under the present law.

(10) Foreigners who acquire real estate in the republic, provided they do not specify their intention of preserving their nationality—as soon as the property

is acquired the foreigner shall state to the notary, or the respective receiver, whether or not he desires to obtain Mexican nationality, as granted under paragraph 3 of the thirtieth article of the constitution, and the decision of the foreigner shall appear in the body of the document.

If he select Mexican nationality, or fail at the time to designate any preference, he may still within a year resort to the department of foreign affairs to comply with the requirements of article 19, and be considered a Mexican.

(11) Foreigners with children, born in Mexico, who do not prefer to retain their character as foreigners. On registering the birth of the child, the father shall indicate his intention in this particular to the judge of the civil register, and the same shall be recorded in the body of the document. If he should select Mexican nationality, or fail to state his intention in that particular, he will still be able to resort to the department of foreign affairs within a year to comply with requirements of the nineteenth article and be considered a Mexican.

(12) Those foreigners who officially serve the government or accept therefrom titles or public offices, provided that within one year from the date of acceptance of those titles or public offices which should be conferred upon them, or from the commencement of their official service to the Mexican government, they resort to the department of foreign affairs to comply with the requirements of the nineteenth article, and be considered as Mexicans.

ART. 2. Foreigners are:

(1) Those born outside of national territory, subjects of foreign governments, and who have not become naturalized in Mexico.

(2) The children of a foreign father, or foreign mother and unknown mother, born on national territory, until they reach the age when, according to the law on nationality of the father or mother respectively, they cease to be minors. If for one year after they arrive at maturity they do not file with the local authorities of the place of their residence their intention of retaining the nationality of their parents, they shall be considered Mexicans.

(3) Those absent from the republic without leave or license from the government, unless on account of studies, or for public interests, or commercial or industrial pursuits, or in the exercise of a profession, who allow ten years to elapse without asking for a prorogation of their term of absence. This prorogation shall not exceed five years on each application, and after the first prorogation is granted, good and sufficient reasons must be given before another can be obtained.

(4) Mexican women who marry foreigners, and who preserve the character of foreigners even during their widowhood, the marriage being dissolved, the native woman can recover her nationality, provided that, in addition to residing in this republic, she make due declaration before the civil judge nearest her residence of her intention to recover that nationality.

The Mexican woman who, under the laws of her husband's country, does not assume his nationality by her marriage shall retain her own.

The change of the husband's nationality after mar-

riage implies a similar change in that of the wife and the minor children subject to the father's authority, provided they live in the country of naturalization of the husband or father, respectively, with the sole exception stated in the preceding clause of this paragraph.

(5) Mexicans naturalized in other countries.

(6) Those who, without leave of congress, officially serve foreign governments in any political, administrative, judicial, military or diplomatic capacity.

(7) Those who, without previous leave of the federal congress, accept foreign decorations, titles or offices, save in the case of literary, scientific or humanitarian titles, all of which they are free to accept.

ART. 3. In order to determine the place of birth in the above cases, it is hereby declared that national vessels, without any distinction, are part of the national territory, and that those born on board of them are considered as being born within the republic.

ART. 4. In virtue of the right of extra-territoriality enjoyed by diplomatic agents the children of ministers and employees of the legations of the republic will never be regarded as being born outside the republic.

ART. 5. The nationality of legally responsible persons or beings is regulated by the law which authorizes the same. In consequence, all those so constituted, according to the laws of the republic, shall be Mexicans, if, in addition, they make it their legal residence.

Legally responsible foreigners enjoy in Mexico the rights guaranteed by the laws of their country in so far as these do not conflict with the laws of the nation.

## CHAPTER II.—OF EXPATRIATION.

ART. 6. The Mexican republic recognizes the right of expatriation as being natural and inherent in every man, and necessary to the enjoyment of individual liberty. In consequence, while it allows its inhabitants to exercise this right, so they can leave its territory and settle in a foreign land, it also protects the right of foreigners of all nationalities who seek to settle within its jurisdiction. The republic, therefore, receives subjects or citizens of other states, and naturalizes them under the provisions of this law.

ART. 7. Expatriation and consequent naturalization obtained in a foreign land do not exempt the criminal from extradition, trial or punishment to which he may be subject under the provisions of treaties, international law, and the law of the land.

ART. 8. Citizens naturalized in Mexico, even if abroad, have a right to equal protection on the part of the government of the republic with native-born Mexicans in their persons or their property. This does not, in case they return to their native land, exempt them from responsibilities incurred before the naturalization, under the laws of that land.

ART. 9. The Mexican government shall, through the channel of international law, protect Mexican citizens when abroad. The president, as he may deem necessary, shall make use of these means, provided they do not constitute acts of hostility. But if diplomatic intervention be not sufficient, and such measures prove futile, or if the offenses against the Mexican nation be serious enough to demand severer measures, the presi-

dent shall notify congress thereof, and furnish the respective documents for constitutional effect.

ART. 10. The naturalization of a foreigner becomes nullified by his residence in his own country for two years, unless he be absent on an official commission for the Mexican government, or with the permission of the same.

CHAPTER III. — OF NATURALIZATION.

ART. 11. Foreigners who comply with the requisites of this law may be naturalized in the republic.

ART. 12. At least six months before applying for naturalization papers the applicant should state in writing, before the municipal council of his place of residence, his intention of becoming a Mexican citizen and of resigning his foreign nationality. The municipal authorities shall give him a certified copy of his application and preserve the original in their archives.

ART. 13. When the said six months shall have passed, and the foreigner has resided two years in the republic, he may apply to the federal government for his certificate of naturalization. To obtain it he should first present himself to the district judge in whose jurisdiction he resides, and furnish proof of the following:

(1) That according to the law of his land, he enjoys all civil rights, being of age.

(2) That he has resided in the republic at least two years, and has observed good conduct.

(3) That, for his living, he has some business, industry, profession or revenue.

ART. 14. The applicant shall add to the petition presented to the district judge a copy of the certificate



issued by the municipal authorities, as specified in article 12. He shall also make an express renouncement of all submission, obedience or fidelity to foreign governments, and especially to that of which he had been a subject, disclaiming also all protection outside of the laws and authority of Mexico, and all rights which, by treaties or international law, are guaranteed to foreigners.

ART. 15. The district judge, prior to the ratification made by the applicant, in the presence of the district attorney, shall take the deposition of witnesses on the points referred to by article 13, and, if he deem it necessary, shall obtain the report which the municipal council should furnish, as promised in article 12.

The judge shall also admit any other proofs presented by the interested party touching the points indicated in article 13, and shall consult the judgment of the district attorney.

ART. 16. In case the decision of the judge be favorable to the applicant, he shall transmit the legal documents, in original, to the department of foreign affairs, applying for the certificate of naturalization, provided there be no legal motive to impede the same. Through the said judge the interested party shall transmit a petition to that department asking for the certificate of naturalization, ratify his renouncement of the rights of a foreigner, and protest adherence, obedience and submission to the laws and authorities of the republic.

ART. 17. Foreigners serving in the national merchant marine may become naturalized, one year of service on board sufficing instead of two years, as otherwise

required under article 13. The district judge of any of the ports touched by the ship is amply authorized to negotiate this matter, and, likewise, any of the municipal authorities of those ports may receive the petitions treated in article 12.

ART. 18. Foreigners naturalized under this law are not included in the provisions of articles 12, 13, 14, 15 and 16, neither are they who have the option of Mexican nationality. In consequence, children of a Mexican father or mother, who has lost his or her citizenship, and to whom the third and fourth paragraphs of article 1 refer; the foreigner who marries a Mexican, referred to in paragraph 6 of the same article; the children of a foreign mother and unknown father, born on national territory, as specified in paragraph 2 of article 2; and a Mexican widow of a foreigner, as treated in paragraph 4 of the same article, shall be considered as legally naturalized by solely complying with the requisites in such cases and without the necessity of other formalities.

ART. 19. Foreigners who find themselves within the scope of paragraphs 10, 11 and 12 of article 1 may apply to the department of foreign affairs for their certificate of naturalization within the terms specified therein. Their petition should be accompanied by a document accrediting them, as the case may be, with the acquisition of real estate, or that they had children born in Mexico, or had accepted some public position. They will also present the renouncement and protest required under articles 14 and 16 for ordinary naturalization.

ART. 20. Absence in a foreign land by permission

of the government does not conflict with the residence clause in article 13, provided it does not exceed six months during any period of two years.

ART. 21. Certificates of naturalization shall not be extended to subjects or citizens of any nation with which the republic may be engaged in war.

ART. 22. Neither shall certificates be given to those who are judicially repudiated, and in other countries declared to be pirates, slave dealers, incendiaries, counterfeiters of coin, or forgers of bank bills or other paper passing current as money, nor assassins, kidnappers or thieves. By common right, naturalization papers fraudulently obtained by a foreigner in violation of the law are null and void.

ART. 23. The certificates of naturalization shall be issued gratuitously, nor may any fee for costs, registry, seal or other expense be collected thereon.

ART. 24. The act of naturalization being a very personal matter, the petitioner may only be represented by a proxy who has special and sufficient powers for the act, and who holds the renouncement and protest made in person by the interested party himself, according to articles 14 and 16. But in no case may the powers of the proxy substitute the actual residence of the foreigner in the republic.

ART. 25. The character of citizen or of foreigner is not transferable to a third party. Therefore, for obvious reasons, neither can the citizen enjoy the rights of a foreigner, nor the latter the prerogatives of the former.

ART. 26. The change of nationality does not produce retroactive effects. The acquisition and rehabilitation

of the rights of a Mexican only take effect on the day following that on which all the conditions and settled formalities of this law have been complied with to obtain naturalization.

ART. 27. Colonists who come to this country under contract with the government, and whose expenses for traveling and installation are paid by the same, shall be considered Mexicans. In their enrollment contract shall be specified their intention to renounce their former nationality and adopt the Mexican, and on settling in the colony they shall file with the competent authorities the renouncement and protest, as required under articles 13 and 16. The authorities shall send the same to the department of foreign affairs, which in turn shall issue the certificate of naturalization in favor of the interested party.

ART. 28. Colonists who come here on their own account, or for private companies and organizations not subventioned by the government, and also immigrants of all classes, may become naturalized in each case under this law. Colonists established up to the present are subject also to the law in this particular in every respect that does not conflict with the rights acquired through their contracts.

ART. 29. The naturalized foreigner shall become a citizen of the republic as soon as he complies with the conditions required by article 34 of the constitution, being clothed with all the rights and obligations as a Mexican citizen ; but he shall not be qualified to discharge those trusts or employments which, in conformity with the laws, require the nationality by birth, unless he had been born in national territory, and that

said nationality had been effected by paragraph II of article 2.

CHAPTER IV.—OF THE RIGHTS AND OBLIGATIONS OF FOREIGNERS.

ART. 30. Foreigners in the republic share the civil rights pertaining to Mexicans, and the guarantees offered in section 1, title 1, of the constitution, with the sole exception of the faculty held by the government for the expulsion of pernicious foreigners.

ART. 31. In the acquirement of waste and government lands, of real estate and of ships, foreigners are not obliged to reside in the republic, but are subject to the restrictions imposed by the laws now in force, with the understanding that all leases of real estate made to a foreigner shall be considered as sales if the term of the contract exceed ten years.

ART. 32. The federal law alone can modify the civil rights of foreigners by the principle of international reciprocity, so that, therefore, foreigners may be subject in this republic to the same legal disqualifications which the laws of their country impose on Mexicans there resident. Consequently the provisions of the Civil Code and of district procedure possess, in this respect, a federal character and are obligatory throughout the union.

ART. 33. Foreigners, without forfeiting their own nationality, may make their homes in the republic for all legal effects. The acquirement, change or relinquishment of their residences are subject to the laws of Mexico.

ART. 34. In case of the suspension of individual guarantees, in the terms prescribed by the twenty-

ninth article of the constitution, foreigners and Mexicans are alike subject to the law decreasing the suspension, save in the case of treaty stipulations.

ART. 35. Foreigners are obliged to contribute toward public expenses in the manner prescribed by the laws, and are also required to respect and obey the institutions, laws and authorities of the country, subjecting themselves to the decisions and sentences of the courts, and without appeal to other resources than are granted to Mexicans by the laws. They can appeal to the *via diplomatica* only in case of the denial of justice or of voluntary delay in its administration, after having exhausted, without effect, the common legal resources, and that as determined by international law.

ART. 36. Foreigners do not enjoy the political rights of Mexican citizens. They, therefore, cannot vote nor be voted for in any popular election, nor be named for any position or commission in a state career. Nor can they join the army, navy or national guards, nor become associated with, or engaged in, the political questions of the country, nor exercise the right of petition in these matters. This is understood not to conflict with the provisions of article 1, paragraph XII, and of article 19 of this law.

ART. 37. Foreigners are exempt from military service. Foreign residents, though, are obliged to serve as police in the event of preserving property and of maintaining order in the place in which they live.

ART. 38. Foreigners participating in the civil dissensions of the country may be expelled from its territory as pernicious foreigners, being subject to the

laws of the republic for any crimes they may commit against it, and without the privilege of having their rights and obligations regulated by international law or by treaties in case of a state of war.

ART. 39. The laws establishing the matriculation of foreigners are repealed. The department of foreign affairs alone can issue certificates of determined nationality to foreigners soliciting the same. These certificates constitute a legal presumption of foreign citizenship, but proofs to the contrary are not barred. The definite proof of determined nationality is presented before the competent courts and by the means established by laws or treaties.

ART. 40. This law does not concede to foreigners any rights denied them by international law, by treaties or by the laws in force in the republic.

#### CHAPTER V.—TRANSITORY MEASURES.

ARTICLE 1. Foreigners who have acquired real estate, or have had children in Mexico, or have held some public position, and who are embraced in the provisions of paragraphs X, XI and XII of article 1 of this law, are obliged to manifest within six months after its publication, provided they have not previously done so, to the political authorities of their place of residence, whether they desire to obtain Mexican nationality or to retain that of foreigners. In the first event, they should immediately apply for the certificate of naturalization, according to the form prescribed in article 19 of this law. If they fail to manifest, as indicated, they shall be considered Mexicans, save in cases where official declaration has been made on that point.

ART. 2. Colonists resident in the country, to whom the last part of article 28 of this law refers, shall manifest, in the manner specified in the preceding article, the nationality they wish to retain, and also apply for their certificate of naturalization under the provisions of that article, if the nationality they desire be Mexican.

ART. 3. The executive, in issuing the necessary regulations for the execution of this law, shall see that requisite measures are taken, so that the local authorities may, as far as they are concerned, give it due fulfillment.

#### WITH TURKEY.

In Turkey there governs a rule similar to the rule of matriculation as promulgated in Mexico.

The bureau of nationality certifies to the nationality of foreigners, which is held to be a prerequisite to maintenance of citizenship.

In the year 1869, the Turkish government issued an order forbidding Turkish subjects to leave the country without permission to become naturalized in another country.

The law as laid down by article V, of the legislation Ottomanes, is as follows: The Ottoman subject, who has acquired a foreign nationality with the authorization of the imperial government, is considered and treated as a foreign subject. If, on the contrary, he has naturalized himself as a foreigner without the preliminary authorization of the imperial government, his naturalization will be considered as null and void, and he will continue to be considered and treated in all respects as an Ottoman subject. No Ottoman sub-



ject can in any case acquire foreign naturalization until after obtaining an act of authorization delivered by virtue of an imperial irade.

The condition precedent to naturalization in a foreign country, that the authorization of the imperial government, should be had for Turkish subjects before their naturalization abroad would obtain recognition upon return to their country of origin. This regulation does not prohibit emigration. It requires that the departure should be lawfully authorized. It affords an opportunity to protect the government, to protect creditors and investigate the condition of the would-be emigrant as appertains to pauperism and crime. By it, the government is made aware of its subject's relations at the time of application for a certificate, and the intended future relations which the emigrant desires to assume. The government is enabled to inquire into unfulfilled and existing obligations which must be performed before departure.

By article IX of the legislation Ottomane, the following rule is laid down: "Every individual inhabiting Ottoman territory is reputed an Ottoman subject, and will be treated as such until his character as a foreigner is verified in a regular manner."

The bureau of nationality is open for this investigation, where, by application, the foreigner may establish his citizenship, pursuant to prescribed rules. As to these rules there has been much discussion. The Turkish government contravenes the principle of international common law, that a passport issued by a government to one of its citizens, was *prima facie* evidence of the citizenship of the person to whom the passport was

issued. This rule was not satisfactory to the Turkish government, which went still further and demanded the full and complete evidence, showing the manner in which the application for citizenship was made, and the form of the certificate granted as the judgment of the court in the application. Other impediments were placed in the way of former Turkish subjects, and in this regard a distinction was made between citizens of the United States, by descent or by naturalization, who were former subjects of other countries, and those who were formerly subjects of the Ottoman empire. In this demand the Turkish government cannot prevail in the international practice, in cases where the subject departed with authority, in this, that a distinction be drawn between citizens of a foreign country, for reason that some of such citizens were former Turkish subjects. The rule is, that the applicant who desires to establish his citizenship, whenever there is any question, must himself furnish the evidence of what he claims, which evidence must be satisfactory to the authorities in charge of the bureau of nationality. This bureau is a special commission, appointed at the ministry of foreign affairs, with the charge to ascertain through an investigation, based on the treaties, conventions and existing laws and regulations, the real nationality of individuals, who, as presumed Ottoman subjects, claim to be of foreign nationality or under foreign protection. F. R., 1886, p. 864.

The practice differs from the Turkish rule.

If the departure was legal this ends the question, and it cannot be raised upon return to the country of origin. It is open upon return, for the government to

inquire into the naturalization, in order to ascertain if the same was legal in all respects, and to call the attention of the government, under which the naturalization was made, to any errors which the government will aid in the investigation of such questions, in the interests of conformity to its own laws, and to prevent fraud. This was the practice with Germany and other states.

WITH COLOMBIA.

The laws which govern citizenship are as follows: Political constitution of Colombia, of date December, 1885.

Article 8. The following persons are declared to be Colombians:

(1) By birth. Those who are natives of Colombia, under either of the following conditions: That the father or the mother was a native of Colombia, or that, being the children of foreigners, they are domiciled in the republic. The legitimate children of a Colombian father or mother, who were born in a foreign country, and shall have afterward fixed their domicile in the republic, are considered Colombian by birth, for the purposes indicated in the laws that determine this condition.

(2) By origin or vicinity. Those who are born in foreign countries, of a Colombian father or mother, and are domiciled in the republic, and all Spanish-Americans who may have appeared before the municipal authorities of the place in which they reside, and register themselves as Colombians.

(3) By adoption. Those foreigners who apply for, and obtain letters of naturalization.

Article 9. The status of the Colombian citizen is forfeited by obtaining letters of administration in a foreign country, fixing therein his domicile, and he may recover it under laws enacted for that purpose.

Article 16. Citizenship is lost when nationality is lost. The quality of citizens shall also be forfeited in either of the following cases when judicially declared:

(1) When he enters the service of a nation at war with Colombia.

(2) When he shall have belonged to a rebellious faction against the government of a friendly nation.

(3) When he shall be condemned to suffer corporeal punishment.

(4) When he shall have been removed from public office by means of a criminal procedure or of an act affecting his civil responsibility.

(5) When he shall have committed acts of violence, falsehood or corruption in elections.

All persons who may have lost their citizenship may petition the senate for restoration.

#### WITH THE HAWAIIAN ISLANDS.

The case of Peter Cushman Jones. Born in the United States, of parents who were citizens of the United States, in 1837. When twenty years of age he went to the Hawaiian Islands. In the year 1864 he took an oath to the government that "he would support the constitution and laws of the Hawaiian Islands and bear true allegiance to his majesty the king." Subsequent to this, by which he became a citizen, he voted and used his influence for good government. He did this in order to protect his business interests. He desired

to re-acquire his citizenship as a citizen of the United States, and asked for instructions.

It was held "to constitute expatriation there must be an actual removal followed by foreign residence, accompanied by authentic renunciation of pre-existing citizenship." 8 Op. Atty.-Genls. 139.

Further than this, no information was imparted by opinion, only the suggestion that the question might at some future time become a matter for judicial investigation. F. R. of U. S., 1882, p. 346.

It would seem that Mr. Jones having complied with the laws of the Hawaiian Islands, by which he became a citizen, and as such exercised his rights and enjoyed his privileges, that he thereby renounced his American citizenship, and could only renew it by compliance with the laws of naturalization precisely the same as would any other alien. To deceive the citizens of the Hawaiian Islands in his contract with them, that he did not intend what he did do in good faith, and only did what he did do to accomplish a certain purpose, namely, protect his business interests and nothing more, certainly could not be countenanced by his former fellow-citizens in the United States. Then again he had his business interests there; he had his domicile there; nothing appears to show that he intended to return to the United States; evidently he was there for a permanent purpose which, coupled with his act by which he took the oath to the king, should be construed as a renunciation of his rights and claims as an American citizen. He could not be under oath to the United States and to the Hawaiian Islands and do his duty by and to both. Such a dual relation would be both im-

practicable and illegal. There was but one instruction to give him and that was, that he had lost his American citizenship in the exercise of his rights as an American citizen, and must re-acquire it as any alien would do. He had the right of expatriation as an American citizen.

#### ALIENS.

Aliens are citizens or subjects of a foreign state residing in another state. The residence may be temporary or permanent.

An alien enjoys rights and privileges in the country in which he is resident; he is subject to the laws the same as are citizens; he may seek redress in the courts for wrongs done, and is within the jurisdiction of the courts for his own wrong-doings. He is entitled to full protection, and owes local allegiance to the laws of the land.

It is the duty of the president, to whom the care of our foreign relations is committed, to take all lawful measures for the protection of alien subjects of a state with which the United States are at peace, who shall come within our territory and place themselves under the safeguard of our laws with the consent of the general and state governments. 3 Op. Atty.-Genls. 253. *Taylor vs. Carpenter*, 3 Story, 458. 7 Op. Atty.-Genls. 229, 351.

For better care and protection, it is the custom to send ambassadors, envoys, ministers and consuls to a country in which foreigners have taken residence. This is done by all civilized countries. In time of war between countries, these representatives withdraw and for the protection of their fellow-citizens, the represent-

atives of other countries which are at peace with the countries at war, are placed in charge of the citizens of the countries at war. Notably was this the case during the late war between Germany and France, during which the minister of the United States to France was requested to take charge of German subjects in France, and the English ambassador to Germany was requested to take charge of French subjects in Germany, after the withdrawal of the respective representatives from either country.

Aliens in a country owe a temporary and local allegiance to the country in which they reside. That is, they become subject to the laws of the country and impliedly agree to obey the law of the land.

"Aliens domiciled in the United States owe a local and temporary allegiance to the government of the United States. They are bound to obey all the laws not immediately relating to citizenship during their residence and are equally amenable with citizens for any infraction of those laws." *Carlisle vs. United States*, 16 Wallace, 148. Mr. Jefferson, secretary of state, to Mr. Genet, June 5, 1793.

Every foreigner residing in a country owes to that country allegiance, and obedience to the laws as long as he remains in it as a duty imposed on him by the mere fact of his residence and the temporary protection which he enjoys, and is as much bound to obey its laws as native subjects or citizens. This is the universal understanding in all civilized states and nowhere a more established doctrine than in this country. 6 Webster's Works, 524. Mr. Buchanan to Mr. Orma, February 1, 1848, MSS.

The use of the term "allegiance," must not be confounded with the import of that term as connected with citizenship. The construction should be, as is the practice, with the interpretation of obedience to the laws. A dual allegiance is as much a fiction as is a dual citizenship. In the English practice it was held that a child born of foreign parents by virtue of birth owed allegiance to England; when, however, the child returned with its parents to the country of their origin he owed another allegiance to that country. In other words, by the birth in England the child of foreign parents became a subject of England so far as English soil was concerned; when not in England he was not protected more than was a naturalized citizen of England as against any claims of the parent country. This is the English rule under the naturalization act of 1870. *In re Bourgoise*, 41 Eng. Law Repts., Chan. Div., p. 310. *In re Willoughby*, 30 Chan. Div., 324.

Heffter lays down the rule to be, "as a general proposition a man can have only one allegiance."

Bluntschli is of opinion, "that aliens owe obedience to the laws of the land in which they reside."

Sir R. Phillimore agrees in this as follows, "all strangers commorant in a land, owe obedience as subjects for the time being, to the laws of it."

In case of rebellion in a country, aliens should refrain from participation in the same, for by so doing they become equally liable for any treasonable acts with those citizens who participate in the rebellion.

<sup>a</sup> Aliens domiciled in the United States, prior to the rebellion, and who gave aid and comfort to the rebellion, were subject to be prosecuted for violation of the



laws of the United States against treason." *Carlisle vs. United States*, 16 Wallace, 148.

#### IN MATTERS OF PROPERTY.

An alien can inherit, carry away and alienate personal property without being liable to any *jus detractus*. 1 Op. Atty.-Genls. 275.

The question of the right to hold real property is a question of municipal law which each society governs by its own regulations. It is not a right which can be demanded on the principles of international common law. At the present time it is well established in Europe and America, that aliens may hold real estate. This rule was accepted in Turkey, by the law of June 15, 1867, and finally in England by the alien act of 1870.

Aliens cannot demand reparation for loss of property caused by internal dissension or rebellion in the country in which they reside, where they suffer in common with the citizens of that country.

The governments of Russia and Austria refused to admit that reparation should be made to Englishmen who suffered losses in their property during the revolutions in Naples and Florence in Italy.

"One cannot admit that a sovereign forced to regain a city temporarily lost to him by rebellion of his subjects, should compensate strangers who in the midst of similar circumstances to his own subjects, become the victims of loss of property." Prince Nesselrode, May 2, 1850.

The United States refused damages to Spanish subjects which they suffered at New Orleans in 1851.

The same rule governed in the civil war of 1861-1865.

The conference of the great powers of Europe at Paris, in 1869, laid down the same rule as to the struggles between Turkey and Greece.

Germany demanded of Spain reparation to her subjects for losses sustained by the bombardments of Don Carlos in 1872, 1873, 1874 and 1875, but failed in her demand.

Aliens are not duly bound to serve in the army other than for local defense in common with other inhabitants. "There is no rule of international law prohibiting the government of any country from requiring aliens to serve in the militia or police." 2 Halleck Int. Law, p. 6.

As aliens do not enjoy political rights, so the political burdens should not be imposed on them. Bluntschli Int. Law, p. 227.

The rule was carried further in the United States in 1863 than it had been previous in the practice. By act of congress March 3, 1863, it was expressly declared that the levy should include "all persons of foreign birth who shall have declared on oath their intention to become citizens."

The English government excepted to this rule in this, that such aliens not having exercised political rights, should be allowed a reasonable period within which to optate to remain or leave the country. This was granted by the government of the United States.

In another instance, the rule was extended to aliens who had exercised the right of suffrage. Certain English subjects residing in Wisconsin complained of this action of the American authorities, on the ground

that they had not surrendered their English nationality by exercising the right of suffrage. Lord Lyons was instructed by the home government to abide the decision of the American law courts.

M. Mercier, the French minister, wrote in a circular to the French consuls, that Frenchmen, who had voted illegally in the United States, had no doubt laid themselves liable to penalties in that country, but that they had not forfeited their French nationality or their rights as aliens to be exempt from compulsory military service. 1 Halleck Int. Law, p. 365.

In some of the states of the union the right of suffrage is extended to aliens who have expressed their intent to become citizens. Under the constitution of the United States, article 1, section 2, clause 1, they may vote for representatives to congress. This right so conferred by the laws of one state does not carry the privilege to vote in the several states nor the enjoyment of immunities which the federal constitution secures and guarantees under article IV, section 1, clause 1. The question has not been raised as to the right of a state to confer extra privileges on an alien which other states do not confer. The distinction between a citizen and an alien with the right of suffrage is confusing. The alien with the right of suffrage under a state law cannot make demands for protection on the federal government except so far as he is entitled under a declaration of intent, filed in any of the federal or state courts, which he may or may not perfect by the act of naturalization.

The theory has been expressed that the test of citizenship is the right of voting in the government of the local, provincial or national community of which one

is a member. Lawrence's *Wheaton on International Law*, p. 393. It would seem that without membership in a community one should not enjoy the right of suffrage, and certainly it seems absurd that an alien under a state law should have the privilege of voting for a representative to congress, when no national law exists under which the alien can claim membership in the national community.

#### ADOPTION OF CHILDREN OF FOREIGN BIRTH.

The act of adoption by a citizen of the United States, of a child born in a foreign country, does not transfer the citizenship of the father to the child. It does not work a change of citizenship in the child. It is not within the rule of *partus sequuntur patrem*. The child will still maintain the citizenship of its natural father, if known; if not, then that of the mother, *mater semper certa est*.

"A citizen of the United States cannot, by adopting a child of foreign nationality, confer on such child the privileges of citizenship in the United States." Mr. Fish, secretary of state, MSS. Dom. Letters, January 6, 1872.

The effect is only to place the foreign-born child in a position when reaching majority to elect either to retain the citizenship of his natural father, or father being unknown, that of the mother as to assume the citizenship of the father by adoption.

#### ADOPTION OF WOMEN BY MARRIAGE.

A citizen of the United States can confer on a foreign born woman the rights and privileges of an American.

citizen by marriage. This rule is modified by 10 U. S. Statutes at Large, 604, in this, "any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen." The requirement, "who might herself be lawfully naturalized," carries within it two elements, the first being the possibility under the laws of the United States of naturalization of women born in foreign countries; and second, the question of civil rights in her relations to the laws of the country of her origin. This latter element is of importance in this, that citizenship does not in itself involve rights and privileges in the country of which one is a citizen, but also protection abroad and recognition of her citizenship when abroad, and in particular in the country of her origin. While this latter element cannot strictly be inquired into as a condition precedent and finally determined by the tribunals of the United States, yet its importance is beyond doubt, and should she, by the laws of her country of origin, not be competent to become naturalized in a foreign country, her citizenship, as conferred by the United States Statutes, would not avail her upon return to the country of her origin.

A Russian woman, by name of Topaz, married an American. The question was whether by such marriage she became exempt from the municipal laws of Russia respecting women. It was held, "there can be no doubt that such a person would upon her marriage to an American citizen acquire the right to be regarded by the authorities of the United States as an American citizen in every country except that to which she owed

allegiance at the time of her marriage." Secretary Fish, June 9, 1874, MSS. Russia.

It was a maxim of the Roman law, which has been incorporated into modern jurisprudence, that as the wife takes the rank, so does she also take the domicile of her husband, and by the same analogy the widow retains it after her husband's death. But if she marry again, her domicile becomes that of her second husband. Woolsey Int. Law, p. 311. Calvo, International Law, Vol. 1, p. 230. Foelix, Droit International Privé, pp. 82, 83.

A woman partakes of her husband's nationality. Secretary Fish, March 18, 1872.

A wife's political status follows that of her husband. Secretary Frelinghuysen, March 31, 1883.

The only mode of adoption by which a private citizen can confer citizenship on an alien is, that of marrying a female of a foreign state. Secretary Fish, March 26, 1870.

In Field's Outlines of an International Code, p. 135, it is laid down "marriage gives to the wife the privileges of the national character of her husband, but does not deprive her of the privileges of that which she had before marriage."

This rule must conflict with itself in the practice. It does not appear to effect any thing other than attribute to her a dual nationality which is a mere fiction of law and impracticable.

The woman changes her nationality, absolutely, by marriage to a citizen of the United States. She does not enjoy in coverture, any other or different rights and privileges from those enjoyed by her husband.

The rule does not require residence in the United States; a woman who is married to a citizen of the United States partakes of his citizenship, though residing abroad. *Kelly vs. Owen*, 7 Wallace, 496. 14 Op. Atty.-Genls. 402.

**MARRIAGE OF WOMEN, CITIZENS OF THE UNITED STATES,  
TO FOREIGNERS.**

The same rule which applies to foreign women who marry citizens of the United States governs women citizens of the United States who marry foreigners.

"A woman, a citizen of the United States, marries an alien who resides out of the jurisdiction. She absolutely ceases to be an American citizen, and becomes subject to all the disabilities of alienage." F. R. of U. S., 1874, p. 413.

A woman was born, married a French citizen, and always resided, before and after the death of her husband, in France. It was held that she was a French subject, though her father at the time of her birth was a citizen of the United States. 12 Op. Atty.-Genls. 7.

The rule has been modified in some respects, as regards rights of inheritance and ability to transfer property. "A woman, who is a citizen of the United States, merges her nationality in that of a foreign husband on her marriage; but it does not necessarily follow that she thus becomes subject to all the disabilities of alienage, such as inability to inherit or transfer real property." Mr. Fish, secretary of state, September 22, 1875, MSS. Mr. Frelinghuysen to Mr. Lawrence, March 31, 1883, MSS., Dom. Let. Mr. Frelinghuysen to Mr. Foster, April 2, 1883, MSS., Dom. Let.

## IN CASE OF DIVORCE.

The woman merges her nationality in that of her husband upon marriage to a foreigner. In case of legal separation, the practice places her in a position similar to that of a minor child, born of foreign parents, who has been adopted by a citizen of the United States upon reaching majority. The wife may elect whether to preserve the foreign nationality acquired by her marriage, or re-acquire her former American citizenship.

This rule was laid down in the French practice, "upon legal separation from her husband, she may chose her domicile." Phillimore, vol. IV, pp. 63, 64, maintains the same to be the English rule. I am not aware of any decided case in England upon the question of the domicile of the wife divorced, *a mensa et thoro*, but in principle it seems to me there can be but little doubt, that in England as in France it would not be that of the husband, but the one chosen for herself after divorce. In case of divorce *a mensa et thoro*, her domicile is not affected by the removal of her husband to another country. *Pennsylvania vs. Ravenel*, 21 How. 103.

## WIDOWHOOD.

Upon death of the husband, the former citizenship of the wife does not revert; she must do some act by which to work a change in her nationality, if she should desire to do so.

"But on widowhood, a woman should be entitled to resume her original nationality, on returning and settling in her former country." Chief Justice Cockburn on *Nationality*, p. 216.



This would be expressive of an intent. She should do more. Her nationality having absolutely merged in that of her husband, she has become an alien, and should be treated as such. The statutes of the United States and codes of European countries prescribe, how aliens may acquire citizenship. The widow abandoned her former citizenship by marriage to her husband. This is equivalent to naturalization abroad. To re-acquire the citizenship lost by her by her marriage, she should comply with the naturalization laws. Mr. Fish to Mr. Washburne, Feb. 24, 1871, MSS., instructed that passports should be withheld from widows of French citizens, former Americans, unless the widows produced evidence of their intent to resume residence in the United States.

"The citizenship acquired by an alien woman through marriage to a citizen of the United States is not lost by the death of the husband." 15 Op. Atty.-Genls. 599.

The English rule was laid down in Parl. Pap. 189, as follows: The British-born widows of American or foreign husbands, if, after the dissolution of their coverture, they should elect to claim the benefit of their British character, they would be at liberty to do so, and must be treated and protected as British subjects. 1 Halleck Int. Law, 369.

#### CITIZENSHIP BY SERVICE IN THE ARMIES.

By section 2066 of the Revised Statutes of the United States, citizenship is conferred as follows: Any alien of the age of twenty-one years and upwards, who has enlisted or may enlist in the armies of the United

States, either in the regular or volunteer forces, and has been or may be hereafter honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such, and shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character as now provided by law, be satisfied by competent proof of such persons having been honorably discharged from the service of the United States.

It has been held in Bailey's case, 2 Sawyer, 200, that this law applies only to the armies of the United States. The term "armies" does not even include marines.

It remains, however, under this act, that the applicant should make a formal application to the court, and prove one year's residence in the United States, good moral character, and that he has been honorably discharged from service in the army.

In this connection, however, it should not be forgotten that citizenship conferred in the foregoing manner is so done in accordance with a domestic rule which holds equally good, and has the same effect as any rules of naturalization, which may be prescribed in any country for its own guidance in its domestic affairs.

#### PASSPORTS AND CLAIMS FOR DAMAGES.

The value of a passport lies in the declaration made under the authorization of the government that the

person or persons named therein are citizens of the country and are entitled to recognition as such by the authorities of foreign governments. Mr. Everett to Mr. Ingersoll, Dec. 7, 1852, MSS. Woolsey Int. Law, pp. 264, 265. Every citizen of a country can demand of his government a passport as evidence of his right to claim protection when abroad. Mr. Fish to Mr. Davis, Jan. 14, 1875, MSS. The simple declaration of an intent to become a citizen does not entitle the applicant to such a certificate of his national character. Print. Per. Inst. Dip. Agents, 1885. The grant of the passport lies in the exercise of a discretionary power vested in the president, and by him delegated to his executive agents. The refusal of an application for a passport is in effect a refusal to extend protection. Whatever the action on the application may be, it is not open to appeal. It is in the power of congress to censure the action by criticism of the exercise of the discretionary power by the executive or his agents.

Applications have been refused to naturalized citizens for reason of inference drawn from their long residence abroad and other circumstances to the effect that they had abandoned their American citizenship. Mr. Fish to Mr. Lockwood, Oct. 27, 1874, MSS. Mr. Fish to Mr. Ehrenbacher, June 5, 1875, MSS. Mr. Blaine gave Mr. Kasson, March 31, 1881, the following instructions: "A naturalized citizen of the United States who returns to his country of origin and there marries, settles and remains twenty years is not entitled to a passport as a citizen of the United States."

Mr. Bayard gave to Mr. Lee, Oct. 2, 1885, the following instructions: "When an Austrian subject, af-

ter having been naturalized in the United States, returns to the country of his origin on a passport dated June 17, 1881, and there resides four years, and then applies for a new passport, such passport ought not to be granted without proof that this residence was meant by him to be temporary and exceptional."

Under these rules it will not be maintained that in the respective countries the applicants become citizens of those countries. When the president of the United States declares that one of his fellow-citizens has abandoned his citizenship, he does not thereby make him a citizen of a foreign country.

The French rule that continued residence abroad for ten years works a loss of French citizenship does not constitute the Frenchman a citizen of the United States because he resided in the United States during that period of time. Even in case of banishment the citizenship is not destroyed. 1 Phillimore Int. Law, pp. 380, 381. Under section 1993, Revised Statutes of the United States, the rights of citizenship shall not descend to children whose fathers never resided in the United States. This does not constitute them citizens of a foreign country. There must be a co-operation of the laws of that country by which such persons become citizens. The action of our authorities alone is not sufficient to work the change against the volition of the citizen. 14 Op. Atty.-Genls. 154.

The theory and the practice proceed upon the principle that citizenship involves duties and obligations as well as rights, and an evasion of the duties and obligations by continued residence abroad works a forfeiture of the right to protection from the authorities

of the United States. Mr. Fish to Mr. Niles, Oct. 30, 1871. Mr. Fish to Mr. Colfax, March 12, 1872. Mr. Fish to Mr. Beardsley, April 28, 1873. Mr. Evarts to Mr. Logan, March 9, 1881, MSS.

There exists between the citizens of a country a contract, either express or implied, through the mediation of their governmental authorities, to afford protection at home and abroad. In order to insure a performance of the contract the exercise of absolute good faith is essential. When abroad and in the exercise of proper conduct toward the citizens of a foreign government, no infraction of his rights should be permitted, and in case there is an infringement of his rights the citizen is entitled to a claim for damages, to be presented in his behalf through the proper diplomatic channels of communication between governments.

The executive must pass upon two questions; first, his relation of good faith to his fellow-citizens, and second, his conduct toward the citizens of the country from whom he seeks damages. Then comes the further question whether or not he is entitled to protection, and under this consideration necessarily follow his relations to his fellow-citizens in matters of maintenance of the government and personal service. Mr. Seward to Mr. Asboth, March 27, 1867. Mr. Fish to Mr. Davis, Nov. 21, 1874, MSS. It would seem extraordinary for a citizen who had resided abroad for twenty years, and during that time had made no contributions or rendered no personal service, to expect his fellow-citizens to extend protection without an investigation of his good faith toward them. The power to refuse protection and the power to decide on and

present a claim for damages to a foreign government is discretionary in the executive, who may exercise his offices after a consideration of all the circumstances pertaining to each individual case.

The principle should not be contested that each citizen should preserve the utmost good faith toward his fellow-citizens in order to enjoy equal rights and privileges at home and equal protection when abroad.



## APPENDIX.

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### I.

#### UNITED STATES NATURALIZATION LAWS.

AN ACT to establish an uniform rule of naturalization and to repeal the acts heretofore passed on that subject.

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,* That any alien being a free white person may be admitted to become a citizen of the United States or any of them on the following conditions and not otherwise:

*First.* That he shall have declared on oath or affirmation before the supreme, superior, district or circuit court of some one of the states or of the territorial districts of the United States or a circuit or district court of the United States three years at least before his admission that it was bona fide his intention to become a citizen of the United States and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever and particularly by name the prince, potentate, state or sovereignty whereof such alien may at the time be a citizen or subject.

*Secondly.* That he shall at the time of his application declare on oath or affirmation before some one of the courts aforesaid that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whereof he was before a citizen or subject, which proceedings shall be recorded before the clerk of the court.

*Thirdly.* That the court admitting such alien shall be satisfied that he has resided within the United States five years at least and within the state or territory where such court is at the time



held, one year at least; and it shall further appear to their satisfaction, that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well-disposed to the good order and happiness of the same: *Provided*, That the oath of the applicant shall in no case be allowed to prove his residence.

*Fourthly.* That in case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application shall be made; which renunciation shall be recorded in the said court: *Provided*, That no alien who shall be a native citizen, denizen or subject of any country, state or sovereign with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States.

SEC. 3. And whereas doubts have arisen whether certain courts of record in some of the states are included within the description of district or circuit courts: *Be it further enacted*, That every court of record in any individual state having common-law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien who may have been naturalized in any such court shall enjoy, from and after the passing of the act, the same rights and privileges as if he had been naturalized in a district or circuit court of the United States.

SEC. 4. *And be it further enacted*, That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said states, under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are or have been citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as

citizens of the United States: *Provided*, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States: *Provided, also*, That no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen as aforesaid without the consent of the legislature of the State in which such person was proscribed.

SEC. 5. *And be it further enacted*, That all acts heretofore passed respecting naturalization be, and the same are, hereby repealed.

Approved April 14, 1802.

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AN ACT in addition to an act entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.

SEC. 2. *And be it further enacted*, That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Approved March 26, 1804.

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AN ACT for the regulation of seamen on board the public and private vessels of the United States.

SEC. 12. *And be it further enacted*, That no person who shall arrive in the United States from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not for the continued term of five years next preceding his admission as aforesaid have resided within the United States, without being at any time during the said five years out of the territory of the United States.

Approved March 3, 1813.

AN ACT in further addition to "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any alien, being a free white person, and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States without having made the declaration required in the first condition of the first section of the act to which this is an addition, three years previous to his admission: *Provided*, Such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove, to the satisfaction of the court, that for three years next preceding it has been the bona fide intention of such alien to become a citizen of the United States, and shall in all other respects comply with the laws in regard to naturalization.

SEC. 2. *And be it further enacted*, That no certificates of citizenship or naturalization heretofore obtained from any court of record within the United States shall be deemed invalid in consequence of an omission to comply with the requisition of the first section of the act entitled "An act relative to evidence in cases of naturalization," passed the twenty-second day of March, one thousand eight hundred and sixteen.

SEC. 3. *And be it further enacted*, That the declaration required by the first condition specified in the first section of the act to which this is an addition, shall, if the same has been bona fide made before the clerk of either of the courts in the said condition named, be as valid as if it had been made before the said courts respectively.

SEC. 4. *And be it further enacted*, That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first

section of the act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition, any thing in the said act, or in any subsequent act, to the contrary notwithstanding.

Approved May 26, 1824.

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AN ACT to amend the act entitled "An act for the regulation of seamen on board the public and private vessels of the United States," passed the third of March, eighteen hundred and thirteen.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the last clause of the twelfth section of the act hereby amended, consisting of the following words, to wit, "without being at any time during the said five years out of the territory of the United States," be, and the same is hereby, repealed.

Approved June 26, 1848.

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AN ACT to secure the right of citizenship to children of citizens of the United States born out of the limits thereof.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States: *Provided, however,* That the rights of citizenship shall not descend to persons whose fathers never resided in the United States.

SEC. 2. *And be it further enacted,* That any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.

Approved February 10, 1855.

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*Second Session, Thirty-seventh Congress, chap. 200.*

SECTION 21. *And be it further enacted,* That any alien of the age of twenty-one years and upwards, who has enlisted or shall

enlist in the armies of the United States, either the regular or the volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become a citizen of the United States, and that he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and that the court admitting such alien shall, in addition to such proof of residence and good moral character as is now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States as aforesaid.

Approved July 17, 1862.

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*Article XIV of the Constitution of the United States, adopted  
July 28, 1868.*

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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AN ACT to amend the naturalization laws and to punish crimes against the same and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any oath, affirmation or affidavit shall be made or taken under or by virtue of any act or law relating to the naturalization of aliens, or in any proceedings under such acts or laws, and any person or persons taking or making such oath, affirmation or affidavit, shall knowingly swear or affirm falsely, the same shall be deemed and taken to be perjury, and the person or persons guilty thereof shall upon conviction thereof be sentenced to imprisonment for a term not exceeding five years,*

and not less than one year, and to a fine not exceeding one thousand dollars.

SEC. 2. *And be it further enacted*, That if any person applying to be admitted a citizen, or appearing as a witness for any such person, shall knowingly personate any other person than himself, or falsely appear in the name of a deceased person, or in an assumed or fictitious name, or if any person shall falsely make, forge or counterfeit any oath, affirmation, notice, affidavit, certificate, order, record, signature or other instrument, paper or proceeding required or authorized by any law or act relating to or providing for the naturalization of aliens; or shall utter, sell, dispose of or use as true or genuine, or for any unlawful purpose, any false, forged, antedated or counterfeit oath, affirmation, notice, certificate, order, record, signature, instrument, paper or proceeding as aforesaid; or sell or dispose of, to any person other than the person for whom it was originally issued, any certificate of citizenship, or certificate showing any person to be admitted a citizen; or if any person shall in any manner use for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment or exemplification, showing such person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate, judgment or exemplification has been unlawfully issued or made; or if any person shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person; or use, or attempt to use, or aid, or assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, or counterfeit, or antedated, or knowing the same to have been procured by fraud, or otherwise unlawfully obtained; or if any person, and without lawful excuse, shall knowingly have or be possessed of any false, forged, antedated or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, antedated or counterfeit, with intent unlawfully to use the same; or if any person shall obtain, accept or receive

any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or antedated; or if any person who has been or may be admitted to be a citizen shall, on oath or affirmation, or by affidavit, knowingly deny that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, every person so offending shall be deemed and adjudged guilty of felony, and, on conviction thereof shall be sentenced to be imprisoned and kept at hard labor for a period not less than one year nor more than five years, or be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed, in the discretion of the court. And every person who shall knowingly and intentionally aid or abet any person in the commission of any such felony, or attempt to do any act hereby made felony, or counsel, advise or procure, or attempt to procure, the commission thereof, shall be liable to indictment and punishment in the same manner and to the same extent as the principal party guilty of such felony, and such person may be tried and convicted thereof without the previous conviction of such principal.

SEC. 3. *And be it further enacted*, That any person who shall knowingly use any certificate of naturalization heretofore granted by any court, or which shall hereafter be granted, which has been, or shall be, procured through fraud or by false evidence, or has been or shall be issued by the clerk, or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; and any person who shall falsely represent himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in due course of law, shall be sentenced to pay a fine of not exceeding one thousand dollars, or be imprisoned not exceeding two years, either or both, in the discretion of the court taking cognizance of the same.

*And be it further enacted*, That the provision of this act shall

apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization shall be commenced, had or taken, or attempted to be commenced; and the courts of the United States shall have jurisdiction of all offenses under the provisions of this act, in or before whatsoever court or tribunal the same shall have been committed.

Approved July 14, 1873.

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AN ACT to authorize the appointment of shipping commissioners by the several circuit courts of the United States, to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen.

SEC. 29. That every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant ship or ships of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and shall have served said three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant ship of the United States, any thing to the contrary in any previous act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

Approved June 7, 1872.

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#### EXPATRIATION.

AN ACT concerning the rights of American citizens in foreign states.

WHEREAS, The right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received



emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any declaration, instruction, opinion, order or decision of any officers of this government which denies, restricts, impairs or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.

SEC. 2. *And be it further enacted,* That all naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this government, the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances.

SEC. 3. *And be it further enacted,* That whenever it shall be made known to the president that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the president forthwith to demand of that government the reasons for such imprisonment, and if it appears to be wrongful and in violation of the rights of American citizenship, the president shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, it shall be the duty of the president to use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate such release, and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the president to Congress.

Approved July 27, 1868.

*Extract from the analytical index to the "Treaties and Conventions of the United States with other powers."*

**NATURALIZATION:**

citizens of one nationality are to be deemed and taken to have become citizens of the other, who during a continuous residence of five years in the territories of the other have become naturalized there—Austria, Sweden and Norway; who have resided uninterruptedly there five years, and before, during or after that time, have become or shall become naturalized—Baden; who have become or shall become naturalized, and shall have resided there uninterruptedly five years—Bavaria, Hesse, Mexico, North Germany; as explained in the protocol—Wurtemberg; who may or shall have been naturalized there—Belgium, Denmark; who have become or shall become naturalized—Great Britain.

the declaration of intention to become a citizen has not the effect of citizenship—Austria, Baden, Bavaria, Hesse, Mexico, North Germany, Sweden and Norway, Wurtemberg.

naturalized citizens are liable on return to their original country to be tried and punished for offenses committed before emigration, subject to the limitations established by law—Austria, Baden, Bavaria, Belgium, Hesse, Mexico, North Germany, Sweden and Norway, Wurtemberg; but not for emigration itself—Bavaria, Sweden and Norway.

when a naturalized citizen remains liable to trial and punishment for violation of laws of his old country relative to military duty—Austria, Baden, Belgium, Sweden and Norway.

a naturalized citizen may renounce his acquired citizenship—Austria, Baden, Bavaria, Hesse, Mexico, North Germany, Sweden and Norway, Wurtemberg; but this renunciation does not entitle him to recover his former citizenship without the consent of the government—Bavaria.

a return of the naturalized citizen to his original country is not of itself a renunciation — Austria, Baden.

no fixed period of residence in his original country works of itself a renunciation — Austria, Baden.

a residence in the old country without intent to return works a renunciation — Bavaria, Denmark, Hesse, Mexico, North Germany, Sweden and Norway, Wurtemberg.

the intent not to return may be held to exist when the residence is for more than two years — Bavaria, Denmark, Hesse, Mexico, North Germany, Sweden and Norway, Wurtemberg; but that presumption may be rebutted by evidence — Mexico.

naturalized citizens may re-acquire their lost citizenship in the old country in the manner provided by law — Belgium, Denmark; in the manner and on the conditions prescribed by the old government — Great Britain, Sweden and Norway.

provisions concerning citizenship of inhabitants of territories annexed to the United States — France, Spain, Mexico, Russia.

### III.

*Extracts from the analytical index to the treaties of the United States with other powers, showing what privileges are conferred upon aliens in the United States and upon citizens of the United States by other countries.*

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#### ASYLUM:

vessels and citizens seeking asylum by reason of stress of weather to be treated with humanity, and shall be allowed to repair and depart — Bolivia, Brazil, Colombia (New Grenada), Ecuador, France (obsolete), Guatemala, Hayti, Mexico, Morocco (as to United States vessels), Netherlands (obsolete), Nicaragua, Portugal, Prussia, San Salvador, Sardinia, Spain, Sweden (see Sweden and Norway).

to be exempt from the payment of duties on vessel or cargo unless entered for consumption — Hawaiian Islands, Morocco (as to American vessels), Sardinia.

to be subject to no duties or charges except pilotage, unless remaining longer than forty-eight hours in port — Colombia (New Grenada).

unloading and reloading not to be considered an act of commerce — Sardinia, Two Sicilies.

vessels seeking asylum to be treated as national vessels — Sardinia, Two Sicilies.

shelter not to be given in ports of one power to enemies of the other power who have captured prizes from the other at sea — France, Great Britain.

consulates not to be used as asylum — Germany, Italy.

AUBAINE, DROIT DE: [See "*Personal Property*," "*Real Estate*."

abolished by treaty with Bavaria, France (obsolete), Hesse, Nassau, Saxony, Wurtemberg.

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DÉTRACTION, DROIT DE:

abolished by treaty with Bavaria, France (obsolete), Hanover, Hanseatic Republics, Hesse, Nassau, Saxony, Spain, Wurtemberg, Sweden.

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PERSONAL PROPERTY:

citizen of each, in the country of the other, may own personal property, and may dispose of it by gift, will, or in any other way, and may take such property by gift, purchase, will or succession, paying only such dues as the inhabitant of the country would pay in such case—Austria, Bavaria, Bolivia, Brazil, Brunswick and Luneburg, Colombia (New Grenada), Costa Rica, Dominican Republic, Ecuador, France, Guatemala, Hanover, Netherlands (obsolete), Mecklenburg-Schwerin, Mexico, Oldenburg, Hanseatic Republics, Hawaiian Islands, Hayti, Hesse-Cassel, Honduras, Italy, Nassau, Nicaragua, Orange Free State, Paraguay, Portugal, Prussia, Russia, San Salvador, Sardinia, Saxony, Spain, Swiss Confederation, Two Sicilies, Wurtemberg.

citizens of each in the country of the other may own and

succeed as above, and on removal of the property it shall be exempted from all duty called "Droit de détraction" — France (obsolete), Sweden. [See "*Sweden and Norway*."] ]

in case of the absence of persons who would be entitled to personal property so situated on the death of the owner, the property shall receive the same care which would be bestowed upon the property of a native — Austria, Bavaria, Brunswick and Luneburg, Dominican Republic, Hanover, Hawaiian Islands, Hayti, Hesse-Cassel, Honduras, Mecklenburg-Schwerin, Nassau, Orange Free State, Prussia, Russia, Sardinia, Saxony, Spain, Swiss Confederation, Two Sicilies, Wurtemberg.

disputes as to the inheritance of such property shall be decided by the courts of the country where the property is situated — Austria, Brunswick and Luneburg, Dominican Republic, Hanover, Hawaiian Islands, Hayti, Hesse-Cassel, Honduras, Mecklenburg-Schwerin, Nassau, Orange Free State, Prussia, Russia, Sardinia, Saxony, Spain, Swiss Confederation, Two Sicilies, Wurtemberg.

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#### REAL ESTATE:

citizens and subjects of each nation are to be on the footing of the most favored nation in the territories of the other — Italy.

citizens of each country may dispose of real estate in the territories of the other by will, donation or otherwise — France (obsolete), Bavaria, Colombia (New Grenada), San Salvador, Two Sicilies.

their heirs, legatees and donees, being citizens or subjects of the other contracting party, may succeed to their real estate — Bavaria, Colombia (New Grenada), France (obsolete), San Salvador, Two Sicilies.

citizens of each country may dispose of real estate in the territories of the other, where the laws of the state in which it is situated permit it to be done — Nicaragua, Swiss Confederation.

citizens of each country may possess real estate in the terri-

terries of the other, and dispose of it in the same manner as citizens can — France, San Salvador.

the United States are to recommend states where this is not permitted, to pass laws to allow it; and France reserves the right of establishing reciprocity.

where, on the death of the owner, real estate in the territories of the one power descends upon a citizen of the other, who is disqualified by alienage from taking, he shall be allowed two years to sell the land and withdraw the proceeds — Austria, Bavaria, Hesse, Nassau, Saxony, Wurtemberg.

he shall be allowed three years — Brazil, Ecuador, Guatemala, Hanseatic Republics, Swiss Confederation.

he shall have the longest period allowed by law — Bolivia, Dominican Republic.

he shall be allowed the time allowed by the law of the state or country — Brunswick and Luneburg, Nicaragua, Orange Free State, Portugal, Russia, Swiss Confederation.

he shall be allowed a reasonable time — Hanover, Hawaiian Islands, Portugal, Prussia, Russia, Sardinia, Spain, Mecklenburg-Schwerin.

the time allowed may be prolonged by the government in whose territories the land is situated — Austria, Hesse, Nassau, Saxony, Wurtemberg.

the tax or dues charged on the succession or withdrawal is to be the same as that imposed upon natives — Austria, Bavaria, Bolivia, Brazil, Brunswick and Luneburg, Colombia (New Grenada), Dominican Republic, Ecuador, France, Nicaragua, Orange Free State, Portugal, Russia, San Salvador, Sardinia, Swiss Confederation, Two Sicilies.

such tax or dues to be the same as imposed upon the most favored nation — Hawaiian Islands.

there shall be no duties of detraction — Bavaria, France, Guatemala, Hanover, Hanseatic Republics, Hawaiian Islands, Saxony, Spain, Prussia.

the property of absent heirs is to receive the same care as if it were the property of citizens — Austria, Bavaria, Hesse, Nassau, Saxony, Two Sicilies, Wurtemberg.

all disputes relating to such real estate must be settled before the courts of the country — Bavaria, Hesse, Nassau, Orange Free State, Saxony, Swiss Confederation, Two Sicilies, Wurtemberg.

**RECIPROCAL PRIVILEGES OF CITIZENS OF EACH NATION WITHIN THE TERRITORIES OF THE OTHER:**

the citizens of each may reside in the territories of the other, remaining subject to the laws — Argentine Confederation, Austria, Bolivia, Brazil, Colombia (New Grenada), Costa Rica, Denmark, Dominican Republic, Ecuador, Great Britain (obsolete), Greece, Guatemala, Hanover, Hawaiian Islands, Hayti, Honduras, Italy, Mecklenburg-Schwerin, Oldenburg, Mexico, Nicaragua, Portugal, Prussia, Russia, San Salvador, Sardinia, Sweden and Norway, Swiss Confederation, Two Sicilies, Liberia.

the citizens of each may reside in the territories of the other — Borneo.

vessels and effects of citizens of each in the territories of the other are to be protected and defended — Sweden (see Sweden and Norway), Tunis.

citizens of each being within the territories of the other shall be exempt from forced military service — Argentine Confederation, Costa Rica, Dominican Republic, France (obsolete), Hawaiian Islands, Hayti, Honduras, Italy, Mexico, Nicaragua, Orange Free State, Paraguay, Switzerland, Two Sicilies.

from billeting of soldiers — Two Sicilies.

from contribution in kind or money for compensation for personal military services — Italy, Two Sicilies [they shall *not* be exempt from such contribution — Orange Free State, Swiss Confederation].

from forced loans — Argentine Confederation, Bolivia, Costa Rica, Dominican Republic, Hawaiian Islands, Honduras, Nicaragua, Paraguay, Two Sicilies.

from military exactions — Argentine Confederation, Costa Rica, Dominican Republic, Hayti, Honduras, Nicaragua, Paraguay.

from contributions — Bolivia, Nicaragua.

from contributions in time of war, in which case property is not to be taken without compensation paid in advance — Nicaragua; without compensation on the same footing as natives — Orange Free State.

from extraordinary contributions not general and established by law — Hawaiian Islands, Two Sicilies.

from contributions higher than those paid by natives — Costa Rica, Dominican Republic, Hayti, Honduras, Mexico, Orange Free State, Paraguay.

from judicial or municipal office — Italy.

the citizens of each shall not be liable to the embargo or detention of their vessels, cargoes, merchandise, or effects — Bolivia, Brazil, Colombia (New Grenada), Ecuador, Guatemala, Italy, Mexico, Netherlands (obsolete), San Salvador, Spain, Sweden, Tunis; without compensation — Bolivia, Brazil, Colombia, Ecuador, Guatemala, Italy, Mexico, San Salvador; to be paid in advance — Bolivia; when it can be agreed upon — Italy.

their vessels are to be subjected to such embargo only in cases of urgent necessity, and an equitable indemnity shall be paid — Prussia.

their books and papers are not to be subjected to inspection without the order of a competent legal tribunal — Bolivia, Hawaiian Islands, Hayti, Two Sicilies.

the citizens of each country are to have a right to travel in the possessions of the other — Bolivia, Hawaiian Islands, Italy, Nicaragua, Two Sicilies.

citizens of each residing in the territories of the other may intermarry with natives — Nicaragua.

may enjoy freedom of religious belief, respecting at the same time the laws and usages of the country — Brazil, Bolivia, China, Ecuador, Guatemala, Hawaiian Islands, Hayti, Netherlands (obsolete), Colombia (New Grenada), Paraguay, Argentine Confederation.

and also of religious worship, on conditions as named in the respective treaties (as to consuls and agents) — Algiers (obsolete), Argentine Confederation, Colombia (New Grenada), Costa Rica, Dominican Republic, Honduras,



Mexico, Nicaragua, Paraguay, San Salvador, Sweden (see Sweden and Norway).

they are to have the liberty of burial — Argentine Confederation, Brazil, Bolivia, Colombia (New Grenada), Costa Rica, Dominican Republic, Ecuador, Guatemala, Hayti, Honduras, Netherlands (obsolete), Nicaragua, Mexico, Paraguay, San Salvador, Sweden (see Sweden and Norway).

on the breaking out of a war between the two countries, the citizens of each in the country of the other may remain and continue to trade so long as they behave peaceably — Argentine Confederation, Paraguay, Great Britain (obsolete). all may remain whose occupations are for the common benefit of mankind — Italy, Prussia.

six months are granted to merchants and citizens to arrange their business and withdraw their effects — Dominican Republic, Hayti, Two Sicilies.

succession — the dues are to be paid as those paid by natives — Denmark, German Empire.

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